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HUMAN RIGHTS COMMITTEE

Fifty-third session

SUMMARY RECORD OF THE 1401st MEETING

Held at Headquarters, New York,
on Wednesday, 29 March 1995, at 10 a.m.

Chairman: Mr. AGUILAR

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Initial report of the United States of America

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Any corrections to the records of the public meetings of the Committee at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

95-80543 (E)

The meeting was called to order at 10.25 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (continued)

Initial report of the United States of America (CCPR/C/81/Add.4 and HRI/CORE/1/Add.49)

1. At the invitation of the Chairman, Ms. Deer, Mr. Harper, Ms. Harris, Mr. Patrick and Mr. Shattuck (United States of America) took places at the Committee table.

2. The CHAIRMAN welcomed the United States delegation. The United States of America had ratified the Covenant a quarter century after its entry into force. During that time, many of the ideals of the American founding fathers had been disseminated world wide through the Covenant. He trusted that the dialogue with the United States delegation would be extremely constructive.

3. Mr. SHATTUCK (United States of America) conveyed greetings from the Permanent Representative of the United States to the United Nations, Mrs. Albright, and from the United States Attorney General, Ms. Reno. The appearance of the United States delegation before the Committee was an historic occasion. The year 1988 had marked a turning-point with the ratification of the Convention on the Prevention and Punishment of the Crime of Genocide, followed by the ratification of the International Covenant on Civil and Political Rights in 1992. The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the International Convention on the Elimination of All Forms of Racial Discrimination, had also been ratified and had entered into force for the United States in November 1994. The Convention on the Rights of the Child had been signed in February and the Convention on the Elimination of All Forms of Discrimination against Women was currently before the Senate.

4. In ratifying the Covenant, the United States had reaffirmed its commitment to the inalienable rights enshrined in its Constitution and democratic system, and had agreed to be judged by the same standards it used in assessing the human rights records of other countries. Central to American democracy was a system in which injustices could be addressed and rectified under the rule of law, and a truly independent judiciary empowered to override unconstitutional acts of the legislative and executive branches. Non-governmental organizations, too, played a vital role in the United States in promoting human rights.

5. The United States was still grappling with such problems as crime, drugs, poverty, discrimination, and violence against women. There was vigorous public debate on such sensitive issues as capital punishment, the right to choose abortion, the treatment of Native Americans and other "first peoples" and the functioning of the criminal justice system. His country was committed to open discussion of its problems and welcomed the opportunity to maintain a constructive dialogue with the Committee.

6. There was no single federal agency responsible for human rights. Rather, a number of federal departments and agencies, each with specific areas of jurisdiction, were responsible for the protection and promotion of civil and political rights. In addition, the state Governments had similar but independent responsibilities.

7. The protection of civil and political rights was guaranteed by the federal Constitution, the Bill of Rights and statutes, which could be directly invoked in the courts. The United States Congress also played an important role in protecting and promoting those rights. Federal law set the standard for the protection of civil and political rights, buttressed by the provisions of state and local constitutions and statutes. State and local provisions could provide greater protection than that required by federal law, but not less. The ratification of the Covenant marked the beginning of an ongoing process of extensive consultation and coordination with all federal, state and local authorities, with a view to its full implementation.

8. The United States Government had disseminated the provisions of the Covenant by publishing it in the Federal Register (the official government bulletin) and circulating copies to state attorneys general for distribution to state officials concerned with civil and political rights. Its initial report to the Committee had been published by the Government Printing Office and was available to the public in both hard copy and electronic form. Copies had also been distributed to non-governmental organizations (NGOs), depository libraries all over the country, offices and agencies of the federal Government, state attorneys general, state bar associations and academics in the field of human rights.

9. The Government was organizing public seminars and presentations on the Covenant and its initial report. Government officials had participated in panels on the implications of ratification, sponsored by the academic community, the legal profession and human rights organizations. The Government had interacted extensively with the American NGO community, the largest and most energetic in the world in the process of ratifying the Covenant, preparing the initial report and publicizing those documents. NGOs would also have a key role to play in the implementation of the Covenant.

10. Mr. HARPER (United States of America) said that his official responsibilities within the Department of State included monitoring United States obligations under the Covenant. He outlined the reservations, understandings and declarations on which the United States had conditioned its ratification of the Covenant. The United States delegation had prepared an analysis of the Committee's general comment on reservations and a statement on areas with which it disagreed.

11. The United States had not entered any general reservations to the Covenant. Its five reservations, five understandings and four declarations focused on limited and specific issues. Existing United States law was consonant with the Covenant, taking into account those reservations and understandings. In fact, the Covenant essentially embodied the individual rights and freedoms enjoyed by Americans under their Constitution and Bill of Rights, federal law and the constitutions and laws of the 50 states, territories and dependencies. Most of

the reservations, understandings and declarations concerned the manner in which the United States would give effect to the Covenant in its domestic laws; the fact that certain rights, such as freedom of speech, were given greater protection under the United States Constitution than under the Covenant; and certain differences in approach to the criminal justice system. The initial report discussed the extensive body of American law which already guaranteed the rights set forth in the Covenant. For that reason, no special or separate implementing legislation was proposed.

12. The provisions of the Covenant had been declared to be "non-self-executing", which meant that the Covenant did not create private rights enforceable in United States courts; that could be achieved only through federal legislation. However, United States domestic law established numerous mechanisms by which the Covenant rights it guaranteed could be protected and asserted. Although some had interpreted that approach as a refusal to adapt domestic laws to the Covenant, both the executive branch and the United States Senate were reluctant to use the unicameral treaty power under the Constitution to introduce direct changes in domestic law. That must be done by Congress - both the House of Representatives and the Senate - according to customary legislative procedure. A number of NGOs had been promoting draft legislation in Congress which would eliminate the need for some reservations and understandings.

13. The United States would carry out its obligations under the Covenant in a manner consistent with its federal form of government. That did not constitute a reservation but merely reflected the domestic measures which would be taken to implement the Covenant.

14. In some instances, the provisions of the Covenant impinged upon fundamental rights protected by the United States Constitution. That was particularly true of article 20 of the Covenant, whose provisions on the prohibition of propaganda for war and advocacy of national, racial and religious hatred directly conflicted with the United States constitutional guarantee of free speech. The United States had therefore entered a strong reservation to article 20. Article 19, which permitted certain restrictions to the fundamental right to freedom of opinion and expression, was also incompatible with the constitutional guarantee of free speech. His Government would not impose such restrictions and believed that other States should do so only where absolutely necessary. While the United States Constitution and laws guaranteed equal protection of the law and non-discrimination, they did permit certain distinctions to be made in line with legitimate government objectives. It had therefore stated its understanding that such distinctions were not precluded by the provisions of the Covenant.

15. The most significant reservation concerning the criminal justice system related to article 6, paragraph 5, of the Covenant. United States law authorized capital punishment for crimes committed by juvenile offenders who were 16 or 17 years of age, although the execution of juveniles below the age of 16 years was unconstitutional. His Government did not endorse the recent ruling by the European Court of Human Rights that capital punishment was "cruel, unusual or degrading treatment or punishment" and had entered a reservation to article 7 of the Covenant. In the United States, the issues of capital

punishment and of whether juveniles should be treated as adults in certain situations were still being debated. Current United States law reflected the will of the American people, upheld by the Supreme Court. He noted that capital punishment was not prohibited by the Covenant or by international law.

16. His delegation's understanding of the right to compensation for unlawful arrest or detention (article 9, paragraph 5, of the Covenant) was that States must provide effective mechanisms for seeking compensation, subject to reasonable requirements of domestic law. Other reservations and understandings concerning technical issues of the criminal justice system would be addressed in response to Committee members' questions.

17. In conclusion, he wished to stress that his country's ratification of the Covenant had been based on extensive consultation and coordination with non-governmental organizations, including human rights advocates, academics and practitioners, many of whom had testified before the Senate Foreign Relations Committee during open hearings. Many federal departments and agencies and non-governmental organizations had also been consulted during the drafting of the initial report. The Covenant and the report had been circulated to state attorneys general and to state bar associations. In addition, portions of the report were being used in human rights courses offered at universities and law schools; other parts would be incorporated into textbooks. The implementation of the Covenant and the compatibility of future legislation with it, as well as United States reservations, understandings and declarations, would be constantly reviewed.

18. Mr. PATRICK (United States of America) said that his country's history had not always lived up to its founding ideals of freedom and equality for all citizens. The Civil Rights Division, which he supervised, was the federal agency with primary responsibility for enforcing federal civil rights laws. Those laws prohibited discrimination on the basis of, inter alia, race, colour, sex, religion, national origin and disability. A pamphlet had been circulated to Committee members describing the work of each of the 11 litigating sections in the Civil Rights Division, which was under the authority of the United States Department of Justice. The Division sought to ensure protection in such areas as voting, education, employment, housing and the use of public accommodations.

19. Referring to articles 2 and 26 of the Covenant, he said that, under United States laws, all individuals were guaranteed equal protection of the law without regard to race, colour, sex, language, religion, national origin, property, birth or other status. That right was protected primarily by the Fourteenth and Fifth Amendments of the United States Constitution, which guaranteed equal protection of the law and prohibited the deprivation of life, liberty or property without due process, respectively. Specific rights were guaranteed by other provisions of the Constitution and a number of civil rights statutes.

20. Referring to article 8 of the Covenant, he said that the Thirteenth Amendment to the Constitution prohibited slavery and involuntary servitude. The Civil Rights Division was authorized to prosecute cases of involuntary servitude under three implementing statutes which prohibited holding or returning a person in a condition of peonage, carrying a person away to or enticing a person to involuntary servitude, and holding a person to a condition of involuntary

servitude, respectively. In modern times, migrant workers, children and other vulnerable groups were subjected to involuntary servitude in the United States. Since 1977, the Civil Rights Division had prosecuted approximately 28 cases of involuntary servitude involving 100 defendants. The cases had resulted in 36 convictions and 46 guilty pleas.

21. The right to vote, enshrined in articles 25 and 27 of the Covenant, was at the core of American democracy. The Fifteenth Amendment to the Constitution prohibited the denial of voting rights on account of race, colour or previous condition of servitude and the Voting Rights Act of 1965 and its amendments authorized the Civil Rights Division and private parties to file lawsuits in cases of violation. The Act also banned literacy tests and other devices used to disqualify minority voters. The Civil Rights Division accorded top priority to ensuring that all Americans enjoyed the right to vote.

22. Referring to the rights of minorities to culture, religion and language (article 27 of the Covenant), he said that under the Voting Rights Act, minority language materials and assistance must be provided to persons who did not read or speak English well. Jurisdictions with large minority-language populations had been targeted, in particular, in order to ensure that they participated in the electoral process. The Division had successfully sued Dade County, Florida, for distributing voter information in English only in a largely Hispanic community.

23. The Civil Rights Division was committed to eliminating the vestiges of segregation in elementary and secondary education and in state institutions of higher learning. It was responsible for enforcing Title VII of the Civil Rights Act of 1964, which prohibited public and private employers from discriminating on the basis of race, colour, religion, sex or national origin in employment practices. During the Administration of President Clinton, a record number of lawsuits had been filed against individual discrimination and patterns and practices of employment discrimination. Relief had been provided to over 2,000 victims of discrimination.

24. On the topic of housing discrimination, there was indeed a link between housing patterns and the educational and employment opportunities available to communities. The Administration had made eradication of housing and leasing discrimination one of its highest priorities. The Fair Housing Act prohibited all forms of discrimination in activities relating to the sale, rental, financing and advertising of housing. The Division's Fair Housing Testing Program was a powerful investigative tool for determining whether a housing provider or lending institution was discriminating, and had resulted in a number of lawsuits, extensive injunctive relief and settlements which had created a pool of over $1 million to compensate proven victims of discrimination.

25. With regard to article 23 of the Covenant and the protection of the family, the Civil Rights Division had brought numerous suits alleging discrimination on the basis of familial status on behalf of individuals who had been unable to obtain housing because there were children under 18 in their family.

26. On the issue of confinement and incarceration, he pointed out that the Eighth Amendment of the United States Constitution prohibited cruel and unusual

punishment, which was also prohibited by articles 7 and 10 of the Covenant, and that prohibition was applied to the states through the Fourteenth Amendment.

27. The United States Supreme Court had ruled that prisoners enjoyed certain basic rights regarding prison conditions and treatment during incarceration. The Civil Rights Division was responsible for enforcing the Civil Rights of Institutionalized Persons Act of 1980, which authorized the Attorney General to seek relief for persons confined in public institutions where conditions existed that deprived residents of their constitutional rights. The Division was empowered to initiate civil actions under that statute when there was reason to believe that a person acting on behalf of a state or locality had subjected institutionalized persons to harmful conditions. The provision also applied to mental and nursing care patients.

28. Ms. HARRIS (United States of America) said that the Criminal Division of the Department of Justice, for which she worked, was responsible for the application of all federal criminal laws throughout the country. The Division's principal objective was to safeguard the public's rights by protecting individuals from criminal activity. Aggressive steps had been taken to confront and deal with violent crime, including the high-profile Reno-Gore Anti-Violent Crime Initiative. The Clinton Administration had focused on controlling access to firearms, for example by enacting the Brady Handgun Violence Prevention Act and banning assault weapons under the Violent Crime Control and Law Enforcement Act of 1994. She explained that capital punishment was still applied in the case of particularly violent crimes, but the United States Constitution and federal statutes guaranteed procedural safeguards in capital cases which met or exceeded those provided under international standards. Furthermore, the imposition of the death penalty or any other penalty on the basis of discriminatory grounds was forbidden.

29. The Administration had also enacted the Violence Against Women Act which was the most comprehensive federal effort in its field. It was particularly noteworthy for its coverage of domestic violence and sexual assault, and federal courts were empowered to order broad restitution measures for the victims against persons convicted of such offences.

30. Ms. DEER (United States of America) outlined the history of relations between the United States Government and the Native American tribes. In the 1950s and 1960s the political status of many tribes was terminated and a number of Native American peoples were effectively deprived of their land, tribal identity and culture. The policies of those years represented an abandonment of the special legal obligations and protections to which tribes had been entitled as a matter of federal law. In the 1970s termination policies began to be reversed and a period of tribal self-determination was initiated. Since then, other terminated tribes had regained recognition of their sovereign status and the discredited policy had been repudiated by the Senate and every subsequent President. Furthermore, relations between the tribes and the United States were currently being conducted on a government-to-government basis.

31. The Tribal Self-Governance Act was enacted in November 1994. It inaugurated a policy which was supportive of tribal sovereignty while maintaining the special government-to-government relationship and the

protections inherent in the Federal Indian Trust Responsibility. The Clinton Administration had also emphasized its strong commitment to supporting Native American culture, religions, identities and sovereignty. In addition, it had taken specific measures to resolve long-standing disputes over Indian land rights.

32. The Department of the Interior currently contained two offices with special responsibilities for advancing federal Indian policy. The Office of Self-Governance had been established to implement the Self-Governance Demonstration Project enabling tribes to take control of departmental functions, programmes and activities. The purpose of the Office of the American Indian Trust was to ensure that the Federal Indian Trust Responsibility was recognized and fulfilled, because the responsibility was a perpetual legal obligation of the United States.

33. Despite the considerable progress that had been made in advancing the status of Native Americans, she acknowledged that much remained to be done to ensure that America's tribal peoples enjoyed the same quality of life and equality of opportunity as other Americans.

34. Mrs. EVATT asked the delegation to provide further information about the practical impact of the Covenant provisions and the way in which the Covenant was reflected in the domestic legislation of the reporting State. She noted with concern the declaration made by the United States when it ratified the Covenant to the effect that articles 1 to 27 of the Covenant were non-self-executing. In other words, since the United States believed that the basic rights enshrined in the Covenant had long been part of its domestic law, it saw no need to put in place implementing legislation. In that connection she asked whether it was permissible under the Constitution to remove from the Supreme Court's jurisdiction the issue of whether a particular treaty provision was or was not self-executing. If the issue could be thus removed, she asked the reporting State to explain whether the Court's judicial function had therefore been pre-empted. Furthermore, if the United States held that the rights recognized under the Covenant were already guaranteed in domestic law, it would be interesting to know why the courts had been deprived of the opportunity to refer to the Covenant. Specifically, it was unclear how Covenant rights would actually be protected in cases where domestic law was not up to the standards set by that instrument. As a result of the reporting State's position, the Covenant had been disabled from delivering more to United States citizens than the provisions of their domestic law.

35. She noted the apparent contradiction between the delegation's assurance that the United States authorities were intent on ensuring gradual compliance with the Covenant and its statement that no legislative changes were contemplated since the Covenant's provisions were already covered by domestic law. While she appreciated that in many cases progress would be made though the Constitution and Bill of Rights, she felt that the Covenant dealt more fully with issues such as non-discrimination on the grounds of language, the right of minority peoples to use their language, the right to privacy, the equal rights of spouses in marriage, protection of members of indigenous communities, and the protection of the right of every citizen to vote. Additional information would be welcome on any action that had been taken to identify such issues, deal with

them, and provide access to appropriate remedies. In particular, she wished to know whether the United States Government would encourage courts dealing with rights issues to refer to the Covenant in their decisions. She would also welcome information on the extent to which the Government would require executive officials to take account of the Covenant in their activities.

36. The issue of states' sensitivities vis-à-vis the federal authorities was another question that merited close attention. Specifically, paragraph 4 of the initial report mentioned that the federal Government would remove any federal inhibition to the abilities of the constituent states to meet their obligations under the Covenant. She asked the reporting State to clarify what it meant by "federal inhibitions" and to indicate what action the federal authorities had taken to encourage the implementation of the Covenant at the state level. She suggested that any process of regular consultation with states regarding the Covenant would be more effective if the Government was prepared to back up its measures with legislation. Furthermore, a federal agency should be established to review laws on an ongoing basis in order to assess their compatibility with the Covenant. She would also welcome information on what body citizens could approach with their concerns, and requested that states should be consulted more fully in the preparation of future reports.

37. Mr. PRADO VALLEJO said that the United States of America had been a pioneer in the promotion and respect of human rights. Thus, the long delay in ratifying the Covenant was surprising. From his reading of the well-prepared report, it was clear that United States citizens enjoyed broad protections for their rights, although the factors and difficulties in implementing the Covenant could have been discussed in greater detail. Unfortunately, few countries had made more declarations, reservations and interpretations upon ratification, although in introducing the report the United States delegation had dispelled some of his fears. Some areas of concern remained, however.

38. The United States Government did not seem to have a high degree of commitment to changing domestic legislation if it conflicted with the provisions of the Covenant, although its article 2, paragraph 2, spelled out that obligation clearly. Moreover, some of the reservations could indeed affect the object and purpose of the Covenant. For example, the ability to impose the death penalty on minors would affect the application of article 24, paragraph 1, concerning the right of minors to appropriate measures of protection. The greatest cause for concern was the declaration that articles 1 to 27 of the Covenant were not self-executing and could only be applied if domestic laws already existed.

39. He asked for more information about the right of self-determination as stipulated in article 1 of the Covenant, and how it could be implemented under United States law. The blockade against Cuba would seem to contravene that article. He also inquired how the human rights of the Cubans and Haitians currently being detained at Guantanamo, including members of the Mariel boatlift who were still being held, long after the completion of their terms of detention, would be respected. United States legislation included many laws against discrimination, but discrimination still existed, for example the law recently passed in California regarding illegal immigrants. More information on such situations would be welcome.

40. Mr. ANDO paid tribute to the great contribution the United States of America had made to the cause of human rights throughout its history and to its involvement in the establishment of the United Nations and the drafting of its Charter and the Universal Declaration of Human Rights. The delegation had presented a solid initial report and its oral presentation had clarified a number of issues. He noted that the style of presentation of the report tended to refer to the framework of the United States Constitution and laws, rather than the Covenant, however.

41. From his reading of the report, a number of specific questions on individual articles had arisen. With regard to freedom of movement under article 12, he wondered if there was a policy of judicial review of decisions to deny or revoke a passport (paras. 307 and 308), or only administrative review. Article 13 dealt with the expulsion of aliens, and it was unclear whether the immigration judge mentioned in paragraphs 316 and 325 was a member of the judiciary or the executive. Since there was no formal procedure for review of decisions on refugee status, as stated in paragraph 339, he inquired whether the United States intended to become party to the United Nations Convention relating to the Status of Refugees or to work with the Office of the United Nations High Commissioner for Refugees in making determinations of special status. With regard to the right to privacy under article 17, who could be considered a "neutral and detached" official and the status of such an official under domestic law should be clarified.

42. With regard to article 18, the variation among states in the granting of tax-exempt status to religious organizations raised the question of equality before the law. Article 50 of the Covenant provided for the extension of its provisions to all parts of federal States, including local governments. In its fifth understanding, the United States had discussed the allocation of power between the federal Government and the states. It would be helpful to hear more about any procedures that existed to equalize differences between states in the application of such provisions. He would also like to hear the rationale for the more lenient standards applied to governmental assistance to religious institutions of higher education, including information on specific cases. In response to the trends towards an increase in violent crime, loose moral attitudes and the general breakdown of the family structure, many sectors of American society had begun to demand the strengthening of religious education, and he would like additional information on the federal Government's policy in that regard.

43. Turning to article 19 on freedom of opinion and expression, some legacy still remained from the period at the beginning of the Cold War when attempts had been made to limit that freedom, and he wondered how the Government planned to address that legacy. He requested further information on the regulation of the right to strike under articles 21 and 22 and whether any complaints had been made to the International Labour Organization.

44. To conclude, he noted that, at the national level, efforts were being made to control the sale of handguns, and at the international level, the United States was eager to extend the Nuclear Non-Proliferation Treaty indefinitely, both of which related to the right to life under article 6. It seemed to him that those laudable efforts to promote the right to life at all levels were in

conflict with the constitutional right to keep and bear arms, and the United States must begin to face that question squarely.

45. Mr. EL-SHAFEI said that the Committee was fully aware of the significance of the submission of the initial report of the United States of America. The Covenant, which had entered into force in 1977 and had been ratified by 129 countries, was part of an entire system of human rights protection. Human rights were gradually becoming less a concern of individual States and more a global concern, and it was in the best interest of all to strengthen the system of human rights protection. Regrettably, human rights violations were still being committed on a massive scale, and the need for the enforcement of international humanitarian and human rights law was greater than ever. Many countries in the world had undergone drastic changes in the past few years and were making a transition to a new form of government. It was essential for the global system to enhance its ability to assist such countries in transition. The United States had been among the leaders in encouraging countries in transition and crisis to put an end to internal armed conflicts. The expectations raised by the ratification by the United States Government of international conventions was high. The United States' prior hesitation had sometimes been used as an excuse by other countries not to implement the Covenant, since the latter felt that the United States Government was maintaining a double standard. All of those considerations determined the context of the Committee's current dialogue with the United States delegation, and he reiterated that its only concern was seeing the Covenant properly implemented. People all over the world looked to the United States as a yardstick for justice and were grateful that it had taken the initiative to ensure justice and restore hope in many critical situations.

46. With reference to the United States declaration that the provisions of articles 1 to 27 of the Covenant were not self-executing, he recalled that the purpose of treaties was for States to undertake new obligations, and in the case of the International Covenant on Civil and Political Rights, to conform domestic law to international standards enshrined in the Covenant. It was regrettable that by its decision, the Government had prevented the Covenant from being tested in the United States courts. The United States delegation should explain to the Committee the criteria for deciding whether any given treaty would be self-executing, and what criteria would be applied for conforming domestic laws to the provisions of the Covenant.

47. Another obstacle to the effective implementation of the Covenant was the "federalism understanding". It was widely believed in the United States that that understanding was neither necessary as a matter of domestic law, nor desirable. The United States Supreme Court had made it clear that the federal Government could conclude and enforce treaties in respect of matters which would otherwise fall within the jurisdiction of the constituent states.

48. He feared that the Covenant, despite its ratification, might become a "dead letter" in the United States; he would welcome an assurance from the United States delegation that that would not be the case, and that the Covenant would be implemented faithfully.

49. Mrs. MEDINA QUIROGA welcomed the ratification of the Covenant by the United States. It was an important contribution to the international goal of promoting and protecting human rights. The obligation, contained in article 2, to ensure to all individuals the rights enshrined in the Covenant was particularly important in the light of the obligation under article 40 to submit reports to the Committee.

50. Referring to the provisions of the Covenant regarding discrimination on the basis of sex, she asked the delegation of the United States to provide additional information regarding the statement in paragraph 89 that certain pieces of legislation did not cover such discrimination; she wondered whether plans existed to rectify that situation. The reporting State should specify what steps it intended to take in order to ensure equality of rights for women.

51. Referring to the right of privacy as provided for in article 17, she expressed concern regarding the supervision of women prisoners; and in reference to the rights protected under article 7, she asked what the Government planned to do in response to the allegations of mistreatment described in paragraph 280 of the report.

52. Referring to a recent press report in which it had been alleged that experiments had been carried out on children and psychiatric patients in New York State, she asked what steps would be taken to end such practices. She also wondered what progress had been made in the debate in Congress on the issue of race and the death penalty, as discussed in paragraph 86 (c) of the report. Recalling that the United States had reserved the right to impose the death penalty on persons under 18 years of age in certain cases, she suggested that the reservation might, in fact, be unacceptable because of the consensus in international law against capital punishment of juveniles. The reporting State should provide additional information regarding the trial, treatment and punishment of juvenile offenders, especially in certain states of the United States where they were treated as adults in cases of homicide.

53. Mr. KLEIN welcomed the ratification of the Covenant by the United States, and looked forward to a fruitful dialogue. The United States had played a prominent role in the defence of human rights. He thanked the United States delegation for the frankness and clarity of its report, which contained a great deal of valuable information.

54. Referring to the United States declaration that articles 1 to 27 of the Covenant were not self-executing, he wondered whether the courts were prevented from applying the Covenant, or from taking guidance from it in interpreting domestic law. The delegation should also explain how the United States Government would ensure the implementation throughout the country of the rights embodied in the Covenant. Referring to paragraph 475 of the report, and article 14, paragraph 7, of the Covenant, he wondered whether federal or state courts were prohibited from applying the terms of the Covenant in cases of double jeopardy.

55. Recalling that the United States Supreme Court had taken a narrow view on the binding effect of public international law on United States officials serving outside the United States, he asked whether the Government took a

similar view with regard to the applicability of the Covenant. Regarding the ready availability of firearms in the United States, he inquired whether there were any legal mechanisms to ensure that the State was fulfilling its duty to protect the right to life as enshrined in the Covenant.

56. With regard to the freedom of expression and its protection under the First Amendment to the United States Constitution, and recalling that obscenity was excluded from that protection, as explained in paragraph 590 of the report, he wondered whether a similar standard could not be applied in respect of racial hatred.

57. The United States delegation should also make it clear whether it recognized that the right of self-determination, under article 1 of the Covenant, was applicable in the case of Native American tribes. He wondered whether the special concept of sovereignty mentioned in paragraph 43 of the report provided protection against legislative or other measures that might encroach upon their rights; whether land or resources belonging to Native American communities could be taken from them by the Government, with or without compensation; and by which means they could obtain constitutional protection against such acts.

The meeting rose at 1.05 p.m.

UNITED NATIONS

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HUMAN RIGHTS COMMITTEE

Fifty-third session

SUMMARY RECORD OF THE 1402nd MEETING

Held at Headquarters, New York,
on Wednesday, 29 March 1995, at 3 p.m.

Chairman: Mr. AGUILAR

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95-80554 (E)

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The meeting was called to order at 3.10 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (continued)

Initial report of the United States of America (continued) (CCPR/C/81/Add.4; HRI/CORE/1/Add.49)

1. At the invitation of the Chairman, Ms. Deer, Mr. Harper, Ms. Harris, Mr. Patrick and Mr. Shattuck (United States of America) took places at the Committee table.

2. Mr. KRETZMER said that the fact that many of the members of the United States delegation had previously been active members of non-governmental human rights organizations added to the credibility of the country's commitment to human rights. He also paid a tribute to the United States Government for working over the years to break down barriers which had at times prevented nationals of certain countries, including his own country, Israel, from participating in international bodies merely by virtue of their country of nationality.

3. Turning to the report, he associated himself with the remarks made by earlier speakers regarding the reservations, understandings and declarations of the reporting State, which reflected a philosophy underlying its accession to the Covenant, namely, that it would comply with the Covenant so long as such compliance did not require any changes in federal or state laws.

4. One category of disparities between the United States Constitution and the Covenant related to situations in which United States courts held that the Constitution did not apply to certain persons, who were therefore not subject to the usual constitutional guarantees. The situation of excludable aliens (CCPR/C/81/Add.4, paras. 326-332) was one such example. The report stated that excludable aliens held under detention could challenge the detention by invoking habeas corpus in a federal court. However, he wished to know what substantive standards were applied by the courts when dealing with such applications for habeas corpus. He also wished to know whether in such cases the courts maintained that they could not examine on substantive grounds the exclusion of an individual from the United States.

5. There was substantial information from various sources which indicated that excludable aliens being held in detention pending deportation could be held indefinitely. He requested clarification on the law and policy applicable to such persons and wondered whether there were any time-limits on such detentions. The reporting State should also indicate how many persons were currently being detained as excludable aliens and how long they had been held. He was specifically interested in learning the status of Haitians captured on the high seas.

6. With regard to the reporting State's compliance with article 10 of the Covenant, paragraphs 259-262 of the report provided details concerning the legal

and administrative arrangements and guarantees to protect the rights of prisoners. However, little was stated about the actual conditions in federal or state prisons. With respect to paragraph 260, disturbing reports had indicated that in some institutions, serious allegations of sexual abuse of women by male staff had been made and that in some cases the women had been afraid to complain out of fear of reprisals. He wished to know whether the reporting State was prepared to reconsider its attitude with respect to the United Nations Standard Minimum Rules for the Treatment of Prisoners and the Code of Conduct for Law Enforcement Officials.

7. In view of the fact that new laws were being adopted at the state and federal levels which might result in a substantial increase in the prison population, and given the current serious problem of overcrowding, he wondered whether there were any plans to deal with the expected increase while at the same time guaranteeing the humane treatment of prisoners. A number of non-governmental organizations had reported that the conditions in some maximum security prisons or units were particularly serious. He wished to know whether there were special regulations governing such prisons and what was done at the administrative level to ensure that federal and state maximum security prisons complied with the demands of the Covenant.

8. With regard to the stipulation in article 7 of the Covenant relating to consent to medical or scientific experimentation, he observed that although paragraphs 178-187 of the report indicated that the federal Food and Drug Administration permitted the use of unapproved drugs in experimental research under certain conditions, there was no indication as to what those conditions were. The reporting State should indicate whether any federal or state regulations allowed surrogate consent for participation by minors or mental patients in experiments which had no prospect of direct therapeutic benefit to the minors or patients themselves, as well as what measures were taken to ensure that there would be no violation of article 7 where federal regulations did not apply and no parallel state regulations existed. As to the victims of radiation experiments conducted and sponsored by the United States Government (para. 182), it was his understanding that the compensation of victims was expected to be limited and, in most cases, civilian victims would not be receiving compensation. He requested clarification on that point.

9. Mr. FRANCIS commended the reporting State on its excellent initial report and said he wished to focus on compliance with article 6 of the Covenant. Drawing attention to paragraphs 147 and 148, he said he found the assertion in the latter paragraph that approximately half the states had adopted legislation permitting juveniles aged 16 and older to be prosecuted as adults when they had committed the most egregious offences to be a questionable judicial proposition which did not constitute a sound basis for the reservation contained in that paragraph. To deem a fiction a fact in the application of criminal law was not justified. However, to apply the deemed fact in such a way as to invoke the death penalty against young persons to whom it had not previously applied was extremely unfortunate and undesirable, all the more so because the introduction to the report presented sufficient facts on the basis of which an acceptable reservation could have been formulated.

10. He noted that in Stanford v. Kentucky the four dissenting Supreme Court Justices had deemed the execution of an offender under 18 years of age to be disproportionate and unconstitutional, that 27 states did not favour the application of the death penalty to juveniles under the age of 17 years, that its application to those committing capital offences at ages 16 and 17 was the subject of continuing debate in the United States, and that the voting age in the United States was 18 years. Bearing all of that in mind, he wished to know whether the existing situation offered favourable prospects for a joint initiative by the states and the federal Government to establish 18 years as the minimum age at which the death penalty would be applicable.

11. Mrs. HIGGINS praised the reporting State for its excellent and comprehensive initial report and said that she had found the historical information particularly useful.

12. Turning first to questions relating to self-determination, she referred to paragraph 14 and inquired how frequently referenda were held to determine the relationship between the United States and the Commonwealth of Puerto Rico, Guam and the United States Virgin Islands in order to ensure that opportunities for self-determination occurred on an ongoing basis.

13. Drawing attention to paragraph 26, she wished to know why native Hawaiians were not a federally recognized group, whereas the Alaskan natives were. With reference to paragraphs 27, 28, 52 and 53, she wished to know what the limits were to the concept of self-identification and requested an explanation of "legislatively determined" recognition as opposed to "judicially determined" recognition. The reporting State should indicate what action a group which perceived itself as meeting the criteria for recognition outlined in paragraph 53 could take when they were told that they did not in fact do so. An explanation was also needed of the statement in paragraph 45 that a tribe's authority to regulate land use within the boundaries of its territories had been found to vary depending on the character of the territory.

14. Paragraph 63 indicated that Congress could recognize or extinguish aboriginal Native American rights and that there was no obligation to pay compensation when such rights were extinguished. She wished to know what guarantees existed to ensure that federally recognized status, once given, would be more than ephemeral and whether it was possible for the rights of other groups to be extinguished without compensation. She would appreciate knowing whether paragraph 70 implied that fishing and hunting rights were not available outside the lands made available to Alaskan natives under land-settlement arrangements.

15. Referring to paragraph 31 of the report, which highlighted the high instance of poverty, sickness and alcoholism among Native Americans, she asked whether the Self-Governance Demonstration Project which had been directed at alleviating those problems had yielded any results and whether there were any new income-producing possibilities for Native Americans other than casinos. The reporting State should explain if comparable programmes existed for Afro-American and Latino groups aside from efforts to improve education.

16. With regard to de facto segregation in education, the Committee wished to know how many ethnically divided schools there were and to learn more about the current policy on de facto discrimination. Details as to why the Racial Justice Act, the purpose of which had been to ensure that there was no racial bias in the application of the death penalty, had been dropped from the Crime Bill would be welcome.

17. Turning to the section of the report on equal protection of rights in the Covenant (paras. 77-100), she said that the last sentence of paragraph 84 required clarification, as it seemed to imply that it was acceptable to sterilize persons convicted of grand larceny but not embezzlers. The Committee would also appreciate additional information regarding affirmative action programmes and whether the opportunities those programmes were intended to ensure had been guaranteed. Paragraph 100 stated that the United States understood that certain distinctions with regard to equal participation of rights in the Covenant were to be permitted when they were rationally related to a legitimate governmental objective, whereas the Committee's formula specified that distinctions must be reasonable, objective and related to a legitimate purpose under the Covenant. She hoped that the two formulas would amount to the same thing. In that connection, it was unclear why race had been separated out for special treatment in paragraph 821, which stipulated that certain distinctions such as race could be justified only by a compelling governmental interest.

18. The Committee would appreciate additional information regarding language rights in the United States, specifically concerning cases such as the Asian American Business Group v. City of Pomona (para. 825), which appeared to legitimize the "English only" rule in the workplace. Lastly, the reporting State should explain how the difficult policy of bilingual education in schools was being pursued.

19. Mr. BRUNI CELLI commended the United States delegation for submitting a very complete and informative report and welcomed the nomination of Mr. Buergenthal to the Committee.

20. With reference to the section of the report on the right to life (art. 6 of the Covenant), he said it was surprising that the report had devoted only a few paragraphs to the question of the death penalty, whereas paragraph 139 clearly stated that the sanction of capital punishment continued to be strongly debated in the United States. The question of the death penalty was one of the most delicate and controversial human rights issues and a subject which, in the past, had had very negative effects on the enjoyment of fundamental rights and freedoms in the United States as well as in other multiracial societies. In that regard, the reporting State should clarify the grounds on which the report had asserted that the policy to retain the death penalty for the most serious crimes appeared to represent the majority sentiment of the country. To his knowledge, public opinion had not been directly consulted on the subject, by means of a referendum for instance, nor had that issue been the focus of recent electoral campaigns, with a few exceptions. He questioned whether there was not an obvious contradiction between the abolitionist trend which was gaining ground in democratic societies around the world and the restoration of the death penalty, normatively and practically, in the United States of America, which had

placed civil and political rights at the centre of its existence and which protected human rights in its domestic policy and proclaimed them in its foreign policy. He asked the reporting State to explain that paradox to the Committee. More specifically, he wished to know what legal premises had prompted the Supreme Court of the United States in 1976 to revise its previous interpretation that the death penalty violated the Constitution and to permit its re-establishment. Additional information on the social, ethical and other foundations that were thought to justify the application of the death penalty, especially with regard to minors, should be provided.

21. Mr. BHAGWATI commended the United States of America for ratifying the Covenant and also for nominating Mr. Buergenthal, a distinguished jurist and human rights activist who would most certainly be a great asset to the Committee.

22. He appreciated the highly informative report that had been submitted but noted that it seemed to imply that the United States did not need to change any of its laws because the human rights standards laid down in its domestic law were the most acceptable, and that even if international standards were superior, the United States did not propose to acknowledge them and even rejected them by way of reservations, objections and understandings. He hoped that the dialogue between the Committee and the United States Government would lead to a change of attitude on the part of that Government and ultimately in the withdrawal of its reservations. A well-known principle, accepted in many countries such as the United Kingdom, India and Australia, was that in interpreting domestic law, whether constitutional or ordinary legislation, the courts must take into account international human rights instruments and make domestic law accord with international human rights standards.

23. The reservation which the United States had made to the death penalty for minors between the ages of 16 and 18 was justified in the report on the grounds that the Supreme Court had held that it was not unconstitutional to impose the death penalty on persons over the age of 16. The real issue at stake, however, was not whether that penalty was unconstitutional, but whether it was right for any Government to impose the death penalty on a minor aged 16 or 17 on the grounds that law and order necessitated such a measure. He hoped that the United States would reconsider its position on that matter and asked the reporting State to clarify how many minors between the ages of 16 and 18 had been sentenced to death and how many had been executed since 1976. The Committee would also appreciate the same data with regard to mentally retarded persons.

24. It was accepted that where there was de facto inequality, imposition of de jure equality had the effect of accentuating de facto inequality. Unequals had to be treated unequally in order to produce substantive equality. In that regard, and referring to paragraph 85 of the report, which dealt with affirmative action, he asked how the United States Government expected to raise the status of African Americans, Latinos and other minority groups to the level enjoyed by the majority in the areas of education, employment and health care without affirmative action.

25. The reporting State should clarify why the United States Government, in ratifying the Covenant, had declared that its provisions would be non-self-executing and why it had not allowed the Supreme Court to decide that issue. If domestic law was in conformity with the Covenant, then it was difficult to understand why it was necessary to state it was not self-executing. Ensuring respect for human rights required a strong judicial mechanism, and access to that mechanism must be facilitated. If any impediments existed, it was the duty of the State to help remove them and to provide legal aid to any person whose rights under the Covenant had been violated and who was denied access to justice for lack of money. In that regard, he asked whether the reporting State had established and funded any legal aid scheme to help poor and indigenous persons ensure that their rights under the Covenant were upheld.

26. It was unclear why the Federal Rules of Civil Procedure had been amended to provide mandatory sanctions for parties found to be in violation of rule 11, which dealt with unfounded or groundless actions. He pointed out that under article 10 of the Covenant, prisoners were entitled to receive humane treatment and that the conditions in maximum security prisons in the United States were in violation of that article.

27. Mr. MAVROMMATIS commended the unique contribution made by the United States to international efforts to promote human rights. Although the report under consideration was a very good one, more information would be appreciated on the exceptions to provisions of the Covenant. The considerable number of reservations, declarations and understandings undermined, to a certain extent, the credibility of the reporting State's efforts to encourage respect for international minimum standards in the field of human rights. At a time when there was a trend towards providing more and more protection to citizens, he did not understand why United States citizens should be deprived of extra protection under the Covenant. The report also indicated that the protection of human rights varied from state to state. In that connection, he stressed that the Covenant, over and above the Constitution, should serve to make the overall legal system more uniform.

28. The Committee wished to know what kind of preliminary work had been carried out prior to ratification at both the federal and state levels to ensure compliance with the Covenant and whether there was a continuing effort to bring new laws into conformity with the international obligations of the United States. State law, for example, varied with regard to the imposition of the death penalty and treatment of homosexual practices in private. Article 6 of the Covenant, however, pointed in the direction of the complete elimination of the death penalty. The reporting State should specify what methods of execution were used and provide a list of crimes for which the death penalty could be imposed under federal and state legislation.

29. It would be interesting to know what the reporting delegation felt about the question of the sale of weapons in the context of the right to life. A large number of persons were killed by the police in the discharge of their duties. The United States should indicate whether it subscribed to international rules on the use of firearms by security forces and whether the rules on the use of minimum force by policemen varied from state to state.

30. Referring to article 7 of the Covenant, he pointed out that the overcrowding of prisons in the United States was very serious and was bound to increase. With regard to freedom from imprisonment for breach of contractual obligation under article 11 of the Covenant, he inquired whether a person could be held in contempt of court and sentenced to prison for non-compliance with a specific performance order. Lastly, although the United States judiciary was exemplary in many respects, he felt that the election of judges was not the best method to ensure their impartiality; frequent elections compounded that problem.

31. Mr. POCAR commended the United States Government for its contribution to the promotion of human rights and expressed satisfaction with the quality of the initial report, which was very useful in understanding the human rights situation in that country. The question of non-discrimination and equal protection was a sensitive issue in many respects. He was unsure whether the understanding referred to in paragraph 100 of the report was fully in accordance with general comment 18 of the Committee. In that understanding, the United States referred to distinctions permitted when they were rationally related to a legitimate governmental objective. The Committee wished to know what was meant by the phrase "a legitimate governmental objective" and whether such an objective was considered legitimate under United States legislation or the Covenant. Under the Covenant, the permissibility of a distinction should be tested on the basis of the legitimacy of the objective as it related to that instrument. It was important, then, to know whether the United States Government felt that article 26 of the Covenant should be taken into account when testing the legitimate objectives of a State.

32. More information would be appreciated on measures taken by the Government to ensure non-discrimination and equal treatment. According to paragraph 87 of the report, the constitutional Equal Protection clauses protected one only against discriminatory treatment by a government entity, or by persons acting "under color of law"; thus the doctrine did not reach purely private conduct in which there was no governmental involvement. The reporting State should explain the types of conduct in which there was no such involvement, since article 26 of the Covenant could also cover private action to a certain extent.

33. He associated himself with the questions already raised concerning discrimination in housing, employment and education. It would be interesting to know what steps were being taken by the Government to bring state legislation which was not in full compliance with the non-discrimination clauses of the Covenant into line with the Covenant in that regard. The reporting State should indicate whether there was any field covered by the Covenant in which the Government would be prevented, because of lack of competence, from making states comply with the Covenant. Involvement by the states in implementing the provisions of the Covenant was an absolute necessity.

34. The imposition of the death penalty in cases involving persons under 18 years of age was not in conformity with international standards, which could be considered part of international customary law. Accordingly, he appealed to the United States Government to withdraw its reservation relating to the death penalty in the near future. It would be interesting to learn what the Government's position was in the national debate on that subject.

35. He associated himself with the remarks made by Mr. Kretzmer on the conditions of detention in some prisons and stressed the need to comply with articles 7 and 10 of the Covenant in that regard. Lastly, he had doubts concerning the compatibility of the reservation to article 7 of the Covenant if the protection afforded by the Constitution was less than that provided by the Covenant, which reflected international customary law in that area.

36. Mr. LALLAH, referring to articles 40 and 50 of the Covenant, asked to what extent the federal states had been consulted before ratification and what systematic steps were being taken to determine whether the laws of individual states were in compliance with the obligations undertaken on their behalf. The report under consideration was excellent as far as it concerned the federal legal system, but the lack of information about the legal practice and laws of the states was a major deficiency. The next periodic report could provide specific information on the particular problems which were found at the state level.

37. There was no indication as to whether the judiciary had been made aware of the United States Government's reservations to the Covenant or whether the Government intended to acquaint judges with its obligations under the Covenant. He hoped that the judiciary would be made aware of the provisions of the Covenant and the evolving standards resulting from its implementation. It would be interesting to know whether the Supreme Court had had an opportunity to pronounce itself on the non-executing nature of the Covenant. The reporting State should indicate whether an executive decision that a treaty was non-self-executing was binding on the Supreme Court or whether it was up to the Court to determine that.

38. With regard to the right to life, protected under article 6 of the Covenant, he saluted the new United States commitment to outlawing the execution of pregnant women (para. 148); the laws in that respect must now be changed. Yet the United States currently led the world in the execution of juveniles. The Government must take into account the ethos evolving throughout the world away from the death penalty. That was especially important in a country like the United States, with its chequered history of bias against certain minorities. Before the New York State Legislature had reached its final decision to reinstate the death penalty, for instance, it might have made a difference if the federal Government had made those lawmakers aware of the Government's new commitments under the Covenant, even taking into account the reservations.

39. Concerning the right to compensation under article 9, paragraph 5, and article 14, paragraph 6, of the Covenant the United States understanding (para. 258) indicated that entitlement to compensation might be subject to the reasonable requirements of domestic law. The nature of such requirements was unclear. Under the Covenant, the right was absolute, and only the extent of compensation might vary.

40. With regard to the right to counsel (paras. 213, 416 and 431), he would like more information on how the indigent, especially those facing the death penalty, were guaranteed competent counsel. Amnesty International, for instance, had reported a number of death-penalty cases in the United States in

which those convicted had been defended by court-appointed lawyers totally inexperienced in capital cases, a crucial and fatal disadvantage for the accused.

41. Regarding the independence of judges, the merit selection system (para. 381) should be encouraged, since the social pressure of re-election might affect the purity of justice.

42. With reference to access to the political system under article 25, it was unclear how difficult it was for United States voters to register, and also what percentage of those entitled to vote were in fact registered. No democracy could succeed if the majority of the electorate was not on the books. Noting that 30 African Americans had been elected to the Congress, he asked if the reports were accurate that there were plans to redraw certain voting districts in order to limit African American constituencies.

43. Although money was classified as a form of speech under the First Amendment (para. 585), he wondered if it should be so viewed as there were apparently no limits on campaign expenditures, and United States citizens must surely be inordinately influenced by the rich in that regard. With reference again to the First Amendment, he supported Mr. Klein's plea, based on article 20, paragraph 2, of the Covenant, to elevate racial hatred to the level of obscenity under the laws, since racial discrimination resulted in enormous human rights violations. Lastly, he wished to know whether discrimination on the grounds of political opinion or, where housing was concerned, on the grounds of sexual orientation, was punishable by law.

44. Mr. PRADO VALLEJO expressed concern that one United States reservation (para. 148) reserved the right to impose capital punishment under future as well as existing laws, and on persons below 18 years of age. That reservation could run counter to articles 6 or 7 of the Covenant.

45. Mr. ANDO asked whether, on the basis of the 1967 United Nations Protocol relating to the Status of Refugees, the Government had made any arrangement with the United Nations High Commissioner for Refugees on how asylum seekers or refugees were to be handled.

46. Mrs. MEDINA QUIROGA asked, in relation to article 25 of the Covenant, whether it was true that the inhabitants of Washington, D.C. were denied certain political rights such as the right to vote, and if so, why.

47. Two shocking incidents had recently revealed gender bias by judges against women - one condoning violence against unfaithful spouses and the other condoning rape - and she wished to know whether there had been any government reaction.

48. Mrs. EVATT asked how responsibilities were divided between the federal and the state governments in settling human rights questions involving children born outside of marriage and non-citizen children (paras. 700 and 701). She was thinking in particular of Proposition 187, recently adopted in California.

49. Regarding the equality of women before the law, it would be interesting to know if there were any institutions at the state level comparable to the Federal Judicial Center (para. 375) or any federal/state cooperation to provide continuing training for judges. There was clearly a need for the education of judges on gender issues, especially since gender bias was sometimes built into the law.

50. Mr. MAVROMMATIS associated himself with Mr. Pocar's comments regarding the danger of allowing distinctions related to a legitimate governmental objective, since such distinctions could open the way to abuse unless restricted by case law or interpretation. Like others, he would appreciate more information on factors and difficulties affecting the enjoyment of human rights in the United States, the new corporal punishment in respect of children, and death-row conditions. Regarding the latter, the Committee's position was that a long stay on death row, when coupled with other factors, could constitute cruel, inhuman or degrading treatment or punishment. In general, the Committee was against cut-off dates, but surely a stay on death row of almost 20 years had to be taken into consideration before a prisoner was executed.

51. Mr. FRANCIS, noting that apparently only 13 to 14 persons were executed each year out of the approximately 2,500 on death row in the United States, asked whether that slow pace was determined by the appeals process or by a reluctance to execute.

52. Regarding possible reform of the informal prison system, he wondered if there was any system for inspecting the conditions of convicts doing work while in prison to ensure that it was not what might be regarded as forced labour under article 8 of the Covenant. Also, newspaper reports of a recent sensational trial indicated that the accused had been sentenced to life imprisonment during which he would be deprived of access to radio or television, and he asked whether those were normal conditions for life imprisonment.

53. The CHAIRMAN, speaking in his personal capacity, associated himself with the remarks of Mr. Klein and Mr. Lallah regarding the United States reservation to article 20. He, too, believed that racial hatred should be elevated to the rank of obscenity as a punishable crime, and he opposed the imposition of the death penalty on minors.

The meeting rose at 5.55 p.m.

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Fifty-third session

SUMMARY RECORD OF THE 1403rd MEETING

Held at Headquarters, New York,
on Thursday, 30 March 1995, at 10 a.m.

Chairman: Mr. AGUILAR

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The meeting was called to order at 10.20 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (continued)

Second periodic report of Yemen (CCPR/C/82/Add.1)

1. At the invitation of the Chairman, Mr. Al-Ashtal, Mr. Al-Hubaishi and Ms. Al-Hamami took places at the Committee table.

2. Mr. AL-HUBAISHI (Yemen) said that Yemen was a developing country which fully intended to espouse the principles of democracy and human rights. Much had been done for the establishment of a multi-party democracy and freedom of expression; a new constitution had been drawn up, and numerous laws enacted. There were, however, a number of problems such as those resulting from insufficient economic development and lack of technical expertise, which made the implementation of new measures more difficult. Also, the civil strife which had occurred recently had led to a temporary situation of anarchy and chaos, which the Government had overcome by declaring a general pardon and amnesty, enabling the restoration of normal life in the country. He hoped that the Committee would show understanding for the country's difficult circumstances. Yemen did not claim to be perfect, but by acceding to the International Covenant on Civil and Political Rights and several other international humanitarian instruments, it had shown its intention of implementing human rights standards.

Constitutional and legal framework within which the Covenant is implemented, right to self-determination, state of emergency, non-discrimination, protection of the family and children, and rights of persons belonging to minorities (articles 1, 2, 3, 4, 23, 24, 25, 26 and 27 of the Covenant) (section I of the list of issues)

3. The CHAIRMAN read out section I of the list of issues concerning the second periodic report of Yemen, namely: (a) the status of the Covenant in domestic law in the wake of the merging of the People's Democratic Republic of Yemen and the Yemen Arab Republic into a single sovereign State on 22 May 1990; (b) information as to the impact of the recent civil war in Yemen on the exercise of the rights guaranteed under articles 1, 4 and 25 of the Covenant, the safeguards and remedies available to individuals during that period, the status accorded to the rights enumerated in article 4, paragraph 2, of the Covenant, and the reason why the Government of Yemen had not made use of the notification procedure laid down in article 4, paragraph 3, of the Covenant; (c) information, including relevant statistical data, concerning the participation of women in the political and economic life of the country, as well as on measures taken to ensure gender equality; (d) the compatibility of article 40 of the Personal Status Act No. 20 of 1992, which provided for different rights for men and women within the family and stipulated, inter alia, the husband's right to his wife's obedience in matters affecting the family's interests, with article 23, paragraph 4, of the Covenant; (e) information on the law and practice relating to the employment of minors; (f) additional information on measures taken to comply with article 27 of the Covenant; (g) information on steps taken to disseminate information on the rights

recognized in the Covenant, and an indication as to whether the public had been informed on the Human Rights Committee's consideration of the report.

4. In addition to replies to the questions contained in the list of issues concerning the second periodic report of Yemen, the Yemeni delegation would also provide answers to a number of additional questions raised during the Committee's previous session.

5. Mr. AL-HUBAISHI (Yemen) said that he would provide English translations of Yemen's Constitution and of a number of relevant laws.

6. Referring to section I (a), he said that Yemeni constitutional law was implemented in such a way as to give precedence to any international agreement over local law. Also, any international agreements to which either of the two parts of the country had committed itself before unification were binding upon the unified State.

7. Referring to section I (b), he said that, thanks to the general amnesty which had been declared and the return of all the people who had been displaced during the civil war period, the situation had returned to normal. None of the elected members of Parliament had complained of having been deprived of their freedom during that period. As for the state of emergency, which had begun and ended in accordance with the law, it had been declared as a consequence of the beginning of fighting in the civil war.

8. If violations of articles 6, 7 and 8 of the Covenant had taken place during the conflict, they had not been the result of any deliberate government policy; certain military units involved in the conflict might have committed human rights violations as a result of insufficient training or the lack of effectiveness of certain institutions during the crisis. At that time, the organs of State had been too preoccupied with the emergency to be able to report any human rights violations to the other States parties to the Covenant. The parties to the conflict had accused each other of violations, but the Government had had no means of verifying such accusations.

9. Referring to section I (c), he said that on the practical level, the problems of insufficient development, as well as Yemeni traditions and customs, sometimes impeded the implementation of rights which were, in fact, recognized by the Constitution and other laws. There were, however, many indications that women were more involved in the electoral process and that they were advancing in both the public and the private sector. Women had reached the rank of deputy minister in certain government departments. Efforts were continuing to improve the status of women through education and economic measures.

10. Referring to section I (d), he said that awareness of the sanctity of religious rules sometimes motivated legislators to produce laws which might not correspond exactly to what the Government would have wished.

11. Referring to section I (e), he said that Yemeni law prohibited the employment of children under 15. However, some families in rural areas and remote towns expected their children to work in agriculture or in family businesses. He expected that in future, when the Government would be able to

provide educational and social services fully, the number of minors who were working would be reduced, especially in rural areas.

12. As to section I (f), he said that the only minority in Yemen was a group of some 500 Jews, who had their own culture, ancient language, and religious practices, and were free to travel within the country and abroad whenever they wished, like any other Yemeni citizen.

13. Referring to section I (g), he said that most reports issued by human rights organizations, whether local or international, were published by Yemeni newspapers, particularly the opposition press, without any government censorship. All details of the current meeting with the Committee would be widely published.

14. Mr. EL-SHAFEI said that it was very encouraging that the Government of Yemen had sent such a high-level delegation; it showed that the dialogue with the Committee would be constructive and useful. The Committee understood the problems and impediments faced by the Government as a result of the recent civil strife.

15. Recalling that the Covenant had been declared to be a part of Yemeni national legislation, he wondered what steps had been taken to ensure that Yemeni courts were fully aware of its provisions, and also to inform citizens of those provisions. Regarding women's rights, he inquired what were the areas of employment in which women worked, and what was the level of education among girls; what was the percentage of women participating in elections and in political parties. He would also welcome information regarding the updating of laws to make them more fair to women.

16. He asked to what extent the Government considered that there were contradictions between the Shariah and the provisions of the Covenant, and whether any reservations that Yemen might have made to the Covenant had resulted from that consideration.

17. He wondered whether the Secretary-General of the United Nations had been notified of the declaration and lifting of the state of emergency. With respect to cases of torture, it would be important to know whether Yemen abided by articles 4, 6, 7, 8, 11, 15, 16 and 18 of the Covenant. In particular, the delegation should provide information on investigations into cases of torture, the findings of those investigations, the compensation provided to victims and the prosecution of those responsible.

18. He wondered whether the unification of the People's Democratic Republic of Yemen and the Yemen Arab Republic had had any impact on legislation which had been in force previously in either of the two countries and, in particular, on the Personal Status Act as it applied to children. Information should be given on safeguards to protect political prisoners and killings committed by the security apparatus. He inquired about the scope and effect of the general amnesty, the violations it covered and its impact on those civilians who had been victims of abuse.

19. He wished to know if the President or Head of State ratified draft laws or bills approved by Parliament over the objection of members of the Government. He would be grateful for details on the laws concerning women, in particular, whether such laws were equitable or could be amended with a view to ensuring equality between the sexes. It would be useful to know whether Yemeni human rights organizations were authorized to conduct their activities within Yemeni territory. The report made no mention of them.

20. Mr. KLEIN asked whether the constitutional revisions introduced in autumn 1994 had had an impact on the issues examined by the Committee, particularly as the Islamic Shariah was the basis for all legislation.

21. He wondered whether the approximately 500 people who made up the Jewish minority in Yemen (para. 113 of the report) were permitted to leave the country for the destination of their choice, particularly Israel. He wished to know whether that minority enjoyed all the rights guaranteed under article 25 of the Covenant, for example, participation in public life or recruitment for public service. He would also appreciate more information on the status of persons who had only one Yemeni parent. Apparently, they were virtual social outcasts and had many problems, for example, in obtaining identity cards.

22. He wondered whether the activities of the Yemen Human Rights League were conducted independently or in cooperation with the Government. The delegation should confirm whether there had been a major shift of competence from the judiciary to the police, army and political security forces following the civil war of 1994. In particular, it should provide more details on the security forces and any special powers they had to conduct searches or to interfere with individual privacy.

23. Mrs. HIGGINS said that a number of the questions she had raised during the fifty-second session of the Committee held in Geneva had been answered that morning. She associated herself with Mr. Klein's queries concerning the Jewish minority.

24. Referring to the fusion of two separate legal systems upon the unification of Yemen, she said that it would be interesting to know whether the Government intended to verify the compatibility of the resulting new body of law with the Covenant. Concerning the questions she had raised in relation to article 4 of the Covenant, it was her understanding that, although certain human rights violations had been committed by the military during the state of emergency, no notification had been issued because there had been no formal suspension of rights. In view of the Government's intention to guarantee pluralism, (para. 104 (c) of the report), it would be interesting to know whether authorized political parties were guaranteed equal access to the media. She also wished to know the Government's position on the formation of political parties based exclusively on religious affiliation.

25. Mrs. EVATT expressed regret at the paucity of information contained in the report on the situation of women and children. It was equally disappointing that the delegation had not provided more information in that regard in its oral presentation. Repeating a number of questions she had raised during the Committee's fifty-second session, she inquired about the presence of women in

Parliament; to her knowledge, there were only two women representatives. She expressed concern about the high level of illiteracy among women and doubt as to whether certain provisions of the Civil Code were compatible with the Covenant. She referred, in particular, to provisions of the Civil Code on dowry, the need to obtain a guardian's consent before marriage, and on the wife's obedience to her husband and her inability to refuse sexual relations or to leave the household without his permission. The continued existence of polygamy, as borne out by the Civil Code provision on equal treatment of wives, was disturbing. It would be useful to know whether such provisions would be reviewed by a parliamentary or other special committee and ultimately amended.

26. She wished to know whether children's access to education in rural areas was impeded by child labour. The fact that the custody of children hinged on parental rights established by law rather than on the interests of the child appeared to be incompatible with articles 23 and 24 of the Covenant. She wondered whether that situation would be reviewed. As it appeared that female circumcision persisted in certain parts of Yemen, it would be useful to know whether the Government had adopted a firm policy to eradicate it.

27. Referring to paragraph 107 (c) of the report, she noted that the literacy requirement for voting was discriminatory against women and perhaps other groups of persons which the delegation should identify.

28. Mr. BRUNI CELLI expressed understanding of the difficulties confronting Yemen, particularly the lack of resources and the anarchy following the civil war. In response to section I (a) of the list of issues, the delegation had indicated that international treaty law took precedence over domestic law; however, he wondered whether the Covenant could be invoked in concrete cases. Echoing Mr. El-Shafei's question concerning human rights violations committed during the state of emergency, he asked whether a special body had been established for the submission of complaints by victims or whether complaints were reviewed by the judiciary. Certain rights should never be suspended during a state of emergency; if they had been, investigations should be conducted. He, too, would appreciate information on the scope of the general amnesty.

29. Concerning a question he had raised during the fifty-second session of the Committee relating to section I (c) of the list of issues, he acknowledged that some Yemeni women held high political posts and enjoyed greater access to higher education. However, he would appreciate additional information on women's participation in social and political affairs. He associated himself with the questions raised by Mrs. Evatt concerning women's rights within the family. Lastly, he wondered what action was being taken to disseminate human rights norms and the provisions of the Covenant. Lastly, he inquired whether the Yemeni Government intended to ratify the first Optional Protocol to the Covenant.

30. Mr. FRANCIS said that, like Mrs. Evatt, he was concerned with the issue of women's rights and wished to have more information on the genital mutilation of young girls. Discriminatory practices against women and young girls were documented in brochures published by non-governmental organizations (NGOs). In that connection, it was relevant to recall the second preambular paragraph of the Covenant, emphasizing the inherent dignity of the human person and the fifth

preambular paragraph concerning individuals' duties to other individuals. He wondered if legislative or other action would be taken to ensure respect for those provisions.

31. Mr. BUERGENTHAL requested more specific information on activities to promote public awareness of human rights and of the Covenant (para. 5 of the report). He would appreciate examples of government initiatives and of government support to private-sector activities to that end. Referring to the delegation's statement that the Covenant enjoyed higher status than ordinary law, he inquired whether that was explicitly stated in the Constitution or deduced from customary practice. It would also be interesting to know how treaties ratified by the Republic of Yemen were disseminated to the population.

32. Turning to issues of sexual discrimination, he inquired whether men and women were sentenced to identical punishment for offences, in particular adultery. It would be useful to know what constituted punishment for adultery committed by a woman. He would appreciate an explanation of the system of guardianship described in paragraph 93, in particular, the statement that an adult woman required a guardian's permission before she could marry. The delegation might also provide information on women's representation in Parliament and on other elective councils. Referring to the literacy requirement for voting, he asked whether women had equal access to university education and whether there were special universities for women. It would also be interesting to know whether women were barred from studying certain subjects and, if so, which ones.

33. He wondered whether members of the Jewish minority were permitted to hold public office and if any currently did. Perhaps the delegation could tell the Committee whether Jews were free to leave the country and if, in so doing, they were entitled to take their property with them or dispose of it as they saw fit. He also wished to know whether sanctions were imposed on persons who left the country and whether members of the Jewish minority who left the country were allowed to return to visit relatives. He praised the delegation's responses to the questions contained in the list of issues but requested clarification of its response to question I (d). It was his understanding that laws could not be criticized, particularly if they were based on religion. An explanation would be appreciated.

34. Mr. PRADO VALLEJO asked what was meant by the words "leading role" in paragraph 5. Details on awareness-building activities would also be appreciated. Perhaps the delegation could explain why civil rights had been omitted from the enumeration of rights enjoyed by women (para. 11 of the report). Civil rights, which included provisions on marriage, contracts and, in general, women's life in society, were extremely significant. Lastly, he, too, would appreciate information on the scope of the general amnesty and the conditions for its implementation.

35. Mrs. MEDINA QUIROGA, referring to paragraph 8 on the implementation of article 27 of the Covenant, asked why the Constitution did not explicitly prohibit discrimination on the grounds of political opinion. She wondered whether discrimination occurred on grounds which were not enumerated in the constitutional provisions. If that were the case, she wished to know how the

provisions of the Covenant would be incorporated into the Yemeni legal order. She associated herself with the question posed by Mr. Prado Vallejo concerning civil rights.

36. She wondered whether marital provisions concerning the guardian's consent, the bride-price (para. 93), the woman's duty to obey her husband and not to leave the home without his permission (para. 94) were consistent with the provisions of the Covenant on the equal rights of men and women. She inquired whether gender equality was ensured by other rights of a political nature. Lastly, like Mrs. Evatt, she wished to know the Government's position concerning genital mutilation. She, too, was quite concerned that the requirements for eligibility to vote, set forth in paragraph 107, discriminated against women.

37. Mr. KRETZMER said that paragraph 95 of the report seemed to suggest that men enjoyed greater freedom to divorce their spouses than women. He would welcome information on the procedures for granting divorce to husbands and whether women enjoyed similar rights. He noted that divorced women were entitled to receive maintenance from their former husbands only during the waiting period which must be observed after divorce. It would be useful to have more information on the entitlement of divorced women to maintenance for themselves and their children.

38. On the question of domestic violence, he wished to know whether the courts in Yemen gave special consideration to persons charged with murder whose motive was the preservation of family honour.

39. Mr. ANDO joined Mrs. Evatt in expressing concern at the continuing practice of polygamy. He wondered whether males and females were equal before the law in the matter of the inheritance of property from their parents. Women seemed to have inferior status in Yemen as regards finances, particularly after marriage. That status placed them at a disadvantage when seeking custody of their children after divorce. He wished to know what provisions were made in the social security system to cater to the financial needs of divorced women in order to ensure their equality with men in the matter of custodial rights.

40. On the question of entitlement to Yemeni nationality, he would welcome information on whether sexual equality was maintained in the application of the provisions of article 3 of the Yemeni Nationality Act of 1990.

41. Mr. BHAGWATI asked whether international instruments ratified by Yemen automatically became part of domestic law and thus were enforceable in national courts. He wished to know whether, where domestic law was inconsistent with the provisions of international instruments, the latter were given precedence. Moreover, it would be useful to know whether any mechanism was in place to ensure compatibility between national legislation and the provisions of the Covenant. He also wondered whether parliamentarians, who made domestic law, were made acquainted with the provisions of the principal human rights instruments.

42. Noting that Yemeni law prohibited the employment of minors under 15 years of age, he asked what mechanisms were in place to monitor compliance with the

law and to punish non-compliance. It would also be helpful to know what the effect of the law had been to date.

43. On the question of the small Jewish minority in Yemen, the Committee would welcome information on whether members of that minority held public office and otherwise had the right to participate in public life. It would also be interesting to learn whether human rights groups and relevant non-governmental organizations had been consulted during the preparation of the country's second periodic report.

44. The Committee was gravely concerned about reports of genital mutilation of girls in Yemen. If those reports were true, such a practice would be a violation of the Covenant and the Committee would welcome information on the steps being taken by the Government to put an end to it.

45. Paragraph 107 of the report provided that for a citizen to stand as a candidate for elections, he must be literate. Since a high percentage of women in Yemen were illiterate and were thus barred from being elected to Parliament, it would be useful to know what plans the Government had for removing that barrier.

46. Mr. KLEIN asked whether copies of the most recent version of the Constitution of Yemen could be made available to the Committee.

47. Mr. AL-HUBAISHI (Yemen), replying to the questions put by Mr. El-Shafei, said that the provisions of international instruments ratified by Yemen took precedence over domestic law and could be invoked in a court of law.

48. On the question of the status of women in Yemen, from a theoretical point of view Yemeni women enjoyed all economic, political and social rights. In practice, however, their participation in national life was limited for historical, social and cultural reasons. The Government was making every effort to educate women and to provide opportunities for them to participate more fully in the economic and social life of the nation. In the field of education, in particular, large numbers of women were to be found in colleges and universities, including among the faculty.

49. On the question of whether the provisions of the Covenant were incompatible with those of the Shariah, he pointed out that the sources of the Shariah were the Koran, the traditions of the Prophet Mohammed and Islamic jurisprudence. Of those three sources, Islamic jurisprudence was the most significant and was still being developed. In fact, a full understanding of the concept of the Shariah required a certain level of education and awareness on the part of the public.

50. On the subject of the adverse effect of the state of emergency on respect for human rights, he acknowledged that the recent civil conflict in Yemen had been accompanied by human rights violations. However, the Government had always taken steps to correct the situation when it received reports of such violations. Reports of torture, for example, were investigated and the victims were encouraged to seek redress through the courts.

51. Turning to the question of the laws of the unified State of Yemen, he explained that laws which existed in either of the two States prior to their unification remained in force, unless amended. Parliament had almost completed its review of all the legislation in force in the unified State.

52. On the subject of laws protecting the welfare of minors, legislation was due to be enacted shortly. Many existing laws, including those relating to employment and to the family, contained provisions for the protection of children in general. The Government of Yemen had also ratified the Convention on the Rights of the Child.

53. Responding to the question concerning the effect of the general amnesty that had been declared, he noted that 90 per cent of those who had left the country, including both civilians and military personnel, had already returned. The declaration of amnesty had been enacted into law and could be invoked in national courts.

54. With regard to the procedures for enacting legislation, the Constitution provided that both the Government and members of Parliament could introduce bills for adoption by the Parliament. The President of Yemen had the right to veto any such legislation within 30 days of its adoption. A qualified majority of Parliament could, however, override the presidential veto.

55. To the question put by Mr. Klein concerning the effect of the recent constitutional amendments on the Shariah, he said that, while the amendments had strengthened the basic document, they had been introduced out of deference to certain sections of the population of Yemen and had few if any legal consequences.

56. He noted that several questions had been asked about the rights of the small Jewish minority in Yemen. Jews in Yemen lived in relative isolation by their own choice, for historical and social reasons. No laws prevented them from participating more actively in public life. He personally knew of some Jews who had participated in elections and others who were practising attorneys in Yemen. Moreover, there were no barriers to their leaving Yemen if they so desired.

57. On the question of human rights organizations in Yemen, while there was no specific organ associated with the Government, a number of human rights defence bodies existed, some of which were openly critical of the Government.

58. The text of the amended Constitution was available only in Arabic, but it could be made available to members of the Committee. The relatively few articles that had been amended mainly concerned civil rights and human rights in general.

59. In reply to Mrs. Higgins, he said that the process of amalgamating the laws of the two formerly separate parts of Yemen was under way. Political parties had full rights to express their opinion, publish newspapers and have access to television and radio time in the periods before elections. The laws governing political parties prohibited the association of political parties with religion, and while some of the over 30 parties in Yemen did, indeed, employ religious

discourse, they were not organized around religious principles. The Constitutional Court had jurisdiction over such issues. In reply to Mrs. Evatt, from a theoretical point of view, no distinction was made in the Constitution between the rights of men and women. In practical terms, however, equality was a matter of education, social evolution and social and economic development. The Government encouraged equality and had fostered the establishment of many women's associations. Three women currently served as members of Parliament.

60. Marriage, family and social issues could not be separated from religion. Religious interpretation had been applied to Islamic law, however, in an attempt to reach a middle ground. The dowry had been established under Islamic law as a sum of money paid by the husband to the wife, and while that practice did continue, its value had become mainly symbolic, with a token sum being exchanged. Guardians relinquished their role when a girl reached adulthood, and a woman had the right to manage her financial affairs and enter into contracts independently. Obedience in marriage should be understood to mean the duties of a wife to her husband. If family law was read as a whole, however, it became clear that a husband must also respect many obligations towards his wife. A wife had full freedom to sue for divorce, including in the case where the husband was polygamous and had decided to take a second wife without her consent. Regarding the custody of children, Islamic law itself stipulated that the judge must take into account the interests of the child. Female circumcision was not a major issue in Yemen, having been practised only by a small minority ethnic group in the coastal region.

61. Regarding the political participation of women, there was no literacy requirement for the right to vote, but candidates for elective office must be literate. There was no difference in the education provided to women and to men. Women had the right to attend university and to study the same subjects as men; in fact, there were currently several women teaching at the university. An increasing number of educated women were entering the labour market.

62. The Covenant took precedence over domestic legislation, and some cases testing its provisions were currently pending before the courts.

63. As a result of the declaration of a general amnesty, most of the Yemeni citizens who had left during the civil conflict, both civilians and members of the military, had returned. The amnesty law took precedence over other laws and was being applied as promulgated. After reunification, the number of women employed both in the civil service and in the private sector had risen significantly.

64. Information about the Covenant was disseminated through all the communications media - newspapers, magazines, radio and television. The opposition newspapers published the texts of all the international human rights instruments to which Yemen was a party and reports of international human rights bodies. In addition to seminars and colloquia, the Government had set aside national days for human rights education and training in observance of the International Day for Human Rights Education and the signing of the Universal Declaration of Human Rights.

65. In reply to Mr. Francis, he said many laws had been promulgated that were related indirectly or directly to the dignity of man and the duties of members of society to each other; he cited as a recent example a law passed in February 1995 on the right to work and social security.

66. In answer to Mr. Buergenthal's questions regarding the Jewish minority, no laws prevented their access to the civil service and other forms of employment. Those who had left the country during the civil war had been free to take their personal property with them or to sell it, and any who so desired had returned to Yemen.

The meeting rose at 1 p.m.

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Fifty-third session

SUMMARY RECORD OF THE 1404th MEETING

Held at Headquarters, New York,
on Thursday, 30 March 1995, at 3 p.m.

Chairman: Mr. EL-SHAFEI
(Vice-Chairman)

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In the absence of Mr. Aguilar, Mr. El-Shafei, Vice-Chairman, took the Chair.

The meeting was called to order at 3.20 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (continued)

Second periodic report of Yemen (continued) (CCPR/C/82/Add.1)

Constitutional and legal framework within which the Covenant is implemented, right to self-determination, state of emergency, non-discrimination, protection of the family and children, and rights of persons belong to minorities (arts. 1, 2, 3, 4 and 23-27 of the Covenant) (section I of the list of issues) (continued)

1. At the invitation of the Chairman, Mr. Al-Hubaishi (Yemen) took a place at the Committee table.

2. Mr. AL-HUBAISHI (Yemen), responding to remaining questions on section I of the list of issues, explained that although the Covenant had a higher status than domestic law, it was not above the Constitution. It could be invoked directly in the courts. Since constitutions, however, embodied general principles and were not legal texts in the strict sense of the term, the primary issue was to avoid any contradiction between the Covenant and the national legislation. He agreed that the Government must provide training in human rights to members of Parliament, since they were the ones who must adopt human rights legislation.

3. Concerning equality of women, it was not the general rule that women could not leave home without their spouses' permission. A wife could certainly go out to visit her relatives, to go to market, or for any reasonable purpose. Women also had the right to divorce and could do so simply by applying to the judicial authorities for a divorce, but their right to a dowry was set aside upon dissolution of the marriage. At that point, the wife, who initially was given custody of the children, had the right to receive both alimony and child support from her former husband. Husbands, on the other hand, had no right to maintenance except for a short period of time. Polygamy was permitted in theory, but in practice it was practically impossible to secure court permission because, according to Yemen's interpretation of the Koran, one could not be just to more than one wife.

4. Female genital mutilation did not exist in Yemen. In the past it had been practised, but only in a small coastal region along the Red Sea. As to physical violence, both the legislation and the Shariah condemned it and considered it justification for divorce. On the question of the protection of honour and its consequences in judicial decisions, he pointed out that the issue was not restricted to the Shariah but also came up in modern legislation.

5. Men did receive a greater share of inheritances than women because, according to the Shariah, women were cared for by their spouses and therefore did not need wealth as much as they needed the support of a man, especially in a

traditional society. Experts on the Shariah, however, pointed out that there were many ways, such as grants, wills and endowments, to achieve equality with regard to inheritance.

6. An effort had been made to eradicate illiteracy among women. There were now no illiterate women as far as elections were concerned, since a voter needed only to be able to sign his or her name and could vote by thumbprint.

7. The Yemeni Nationality Act (CCPR/C/82/Add.1, para. 102), like the legislation of other countries, did in fact prescribe that nationality was inherited through the father, and thus the children of a woman married to a foreigner were not granted citizenship. However, the competent authorities could be requested to add such children to their mother's passport. With regard to the employment of minors, there was a Ministry and a Directorate responsible for inspections to prevent child labour. Regarding the Yemeni Jewish minority, only 500 remained and they were generally active as tradesmen and artisans.

Right to life, liberty and security of the person, treatment of prisoners and other detainees, and right to a fair trial (arts. 6, 7, 9, 10 and 14 of the Covenant) (section II of the list of issues)

8. The CHAIRMAN read out section II of the list of issues, namely: (a) the impact of the recent civil war in Yemen on the exercise of the rights guaranteed under the relevant articles of the Covenant; (b) any measures taken to investigate allegations of extrajudicial executions, disappearance, torture or other inhuman or degrading treatment or punishment and arbitrary detention by members of the army or any other security forces, in order to bring those found responsible before the courts and to prevent any recurrence of such acts; (c) clarification as to whether the death penalty had been imposed and carried out during the period under review and for what crimes, and whether there were plans to revise the law with a view to reducing the number of offences currently carrying the death penalty; (d) the rules and regulations governing the use of weapons by the police and security forces, any violations thereof and any measures taken to prosecute persons found guilty and to prevent recurrence; (e) action by the authorities to ensure compliance with article 7 of the Covenant; (f) information on the possibility of using confessions or testimony obtained under duress in court proceedings; (g) arrangements for the supervision of places of detention and procedures for receiving and investigating complaints of abuses against detainees; (h) ways in which the independence and impartiality of the judiciary was ensured, together with information on provisions governing the tenure, dismissal and disciplining of members of the judiciary.

9. Mr. AL-HUBAISHI (Yemen) said that during the civil war period the Government had never given instructions for measures that went beyond the framework of constitutional legitimacy or international conventions, or even international custom. Some fighting units, however, had committed excesses which had been remedied as soon as the Government had been apprised of them. No such excesses had been reported since that period. The Government was constantly striving to improve the performance of State organs within the framework of the right to life and human dignity.

10. The Constitution and laws of Yemen of course imposed penalties for the acts enumerated in section II (b) of the list of issues, and the victims or their families could ask for compensation. It should be noted, however, that false rumours of such activities had been fed by politicians to the public to reduce the stature of their political opponents.

11. With regard to section II (c), many civilized States retained the death penalty. On the basis of the Shariah, Yemen permitted the death penalty, with strict limitations. Recent legislation - and the Government had no intention of revising it in the near future - contained many guarantees such as the right to appeal or to request alleviation of penalty and the need to secure the approval of the Head of State through the Ministry of Justice prior to execution.

12. The rules and regulations referred to in section II (d) prescribed that weapons could be used only in extreme cases. However, during the civil war, some irregular forces posing as official forces had used weapons. Abuses often stemmed from ignorance and the desire for personal vengeance. Since then, the Government had done everything possible to prevent such occurrences and to punish the offenders.

13. Torture was forbidden under Yemeni law as well as under the Shariah, and victims had the right to bring criminal proceedings. He knew of no cases that had not been dealt with by the Government after the fact. With regard to section II (f), both domestic law and the Shariah forbade the use of confessions or testimony obtained under duress, and courts had declared such testimony null and void in specific cases.

14. With reference to section II (g), the Organization of Prisons Act (CCPR/C/82/Add.1, para. 30) governed conditions and treatment in places of detention. In some far-flung areas of the country its regulations had been ignored and some persons had been detained arbitrarily, but that situation had occurred less frequently in recent times. Everyone had the right to complain about mistreatment or abuse of detainees and publicize such complaints so that the Government could intervene and prevent their recurrence.

15. Concerning section II (h), the Judicial Authority Act stipulated - and the Constitution had recently been revised to include - a provision regarding the independence of the judiciary. Judges could not be disciplined or dismissed except on order of the Supreme Council of Justice, on which the judges were represented. Some cases of judicial corruption, caused by the poor economic status of the judges or by pressure put upon them, had come to light. Efforts had been made, however, to improve the material position of judges and to appoint young, well-trained and competent judges who would not be subject to pressure. There were many cases in which the courts had decided in favour of the citizens in proceedings against judges.

Liberty of movement and expulsion of aliens, and freedoms of conscience, religion, assembly and association (arts. 12, 13 and 18-22 of the Covenant) (sect. III of the list of issues)

16. The CHAIRMAN read out section III of the list of issues, namely: (a) the impact of the recent civil war in Yemen on the exercise of the rights guaranteed

under the relevant articles of the Covenant; (b) the main differences in the status of Islam and of other religious denominations, information on any cases of discrimination against non-Muslim believers and any measures taken to prevent the recurrence of discriminating acts; (c) information concerning the law and practice relating to permissible interference with the right to privacy; (d) the limits imposed by law on the exercise of the freedoms of thought and expression; (e) information on the legislation and the practice concerning public meetings.

17. Mr. AL-HUBAISHI (Yemen), referring to section III (a) of the list of issues, said that freedom of movement and residence within the country was guaranteed under the Constitution and article 12 of the Covenant, as was freedom to leave Yemen without permission. A citizen could not be prevented from returning but could, if necessary, be prevented from leaving the country upon a court decision after trial. The Constitution and the Press and Publications Act guaranteed free expression of thought and opinion. The law incorporated the same restrictions as in article 19, paragraph 3, of the Covenant, but the press was very free in Yemen and the Head of State and members of the Government were often criticized personally. Indeed, the Government had lost some court cases it had brought against specific periodicals and individuals.

18. With regard to article 22 of the Covenant, legislation on associations (1962) and the right to work (1995) guaranteed the freedom to form associations and trade unions. Although Yemen had only recently introduced the concept of free trade unions, there were currently 1,080 such organizations and associations. Drawing attention to article 22, paragraph 2, of the Covenant, he said that members of the armed forces and the police were prohibited from belonging to political parties, since Yemen had only recently accepted political pluralism and there was a danger that their weapons might be used against opponents.

19. With regard to the questions in section III (b) of the list of issues, he said that tolerance of all religions was the prevailing philosophy in Yemen. Political extremists had desecrated a holy place during the civil war and the Government had taken steps to prevent the recurrence of such acts.

20. Personal freedom and the freedom to live where one wished were guaranteed in his country. Although excesses had been committed, because some inhabitants were ignorant of the relevant local laws, the press publicized such incidents and the Government took steps to rectify the situation. The limits imposed by law on the exercise of the freedoms of thought and expression, which did not exceed those allowable under the Covenant, included measures to ensure respect for the rights of others and public order and to protect national security.

21. Pursuant to the Constitution, a law guaranteed the right of peaceful assembly with no restrictions other than those necessary in the interests of national security, public order, the protection of morals and the protection of the rights of others, in accordance with article 21 of the Covenant. Because some meetings had degenerated into attacks on property and individuals, prior authorization of meetings by the appropriate government authority was now required.

22. In conclusion, he said that his country was making every effort to ensure respect for democracy, human rights and fundamental freedoms, and it welcomed the guidance of the Committee.

23. Mrs. EVATT said that, although she appreciated the additional information provided by the reporting State, its replies had been too general in nature. The Covenant imposed positive obligations to make rights effective, which required much more than adopting legislation. The purpose of the dialogue on the list of issues was to test how effective legal measures were by determining whether rights were being, or were in danger of being, violated, whether remedies were adequate and what further preventive or remedial measures were required.

24. With regard to excision, she was puzzled by the contradiction between the information provided at the preceding meeting and that given at the current meeting.

25. As to the list of issues, she sought information on the extent of allegations of breaches of the rights mentioned in section II (b), along with specific examples of persons prosecuted, the number of cases brought to court, and practical steps taken to prevent the recurrence of such violations, including new regulations and training programmes. With respect to section II (c), the reporting State should indicate the crimes for which the death penalty could be imposed, the number of cases in which the death penalty had been imposed and carried out and information on whether juveniles under the age of 18 had been executed. Under section II (d), the Committee wished to learn exactly what the relevant regulations were, whether there had been any actual violations and whether training programmes existed to ensure that the rules and regulations were complied with.

26. Mr. MAVROMMATIS said that he shared the views expressed by Mrs. Evatt and wished to provide further examples of the type of information the Committee believed was important. Under section II (a) of the list of issues, he wished to know what measures had been taken by the Government during the Civil War to minimize civilian casualties, to bring about the release of persons who may have been arrested by militias and to ensure that they were treated in a manner consistent with articles 6, 7, 9, 10 and 14 of the Covenant. Similarly, information on the impact of the recent civil war on the courts would be useful.

27. As to section II (c), the reporting State should provide a list of those offences which carried the death penalty and inform the Committee whether the death sentence had been imposed since the submission of its initial report and whether any of the sentences handed down had been contrary to article 6 of the Covenant. As to the delegation's comments concerning other countries which imposed the death penalty, he noted that questions similar to those he had raised in respect of Yemen were put to any State party which imposed the death penalty. The Covenant called for a reduction in the number of offences for which the death penalty could be imposed, with the ultimate objective of eliminating that sanction completely. States parties were also urged to accede to or ratify the second Optional Protocol when ready.

28. With respect to section II (h), further details regarding the Supreme Council of the Judiciary were needed - for example, who its members were, who appointed them and who it advised. Since the tenure of judges was secure, he wondered under what circumstances they could be removed or transferred, whether their emoluments were guaranteed, whether they were immune from civil prosecution for acts or omissions that occurred in the discharge of their duties and how the Council functioned in practice.

29. Mr. POCAR associated himself with the comments made by Mrs. Evatt and Mr. Mavrommatis. Many more details were needed about the concrete measures which had been taken by the Government to protect human rights. The Constitution of the reporting State did not contain a specific provision protecting the right to life, and paragraph 12 of the report linked that right to crime and punishment. Thus, the right to life had a lower status in Yemen than it did in the Covenant.

30. Paragraph 14 of the report stated that the death penalty was applied in accordance with the provisions of Shariah. He wished to know whether the provisions of Islamic law met the requirements of the Covenant with respect to restrictions on the imposition of the death penalty. Similarly, article 33 of the Constitution prohibited inhuman treatment only in respect of the execution of penalties, whereas the scope of article 7 of the Covenant was much broader since it applied to any instance of inhuman treatment. He wondered whether the right of persons to bring allegations of inhuman treatment before the courts was limited by article 33 of the Constitution, or whether it could be exercised in a broader context.

31. The Constitution stipulated that forced labour could not be imposed on citizens unless required by law for the performance of a public service in return for equitable remuneration. However, the limits of the Covenant with respect to compulsory labour were far narrower.

32. With regard to section II (b) of the list of issues, non-governmental organizations had reported that certain safeguards provided in the Constitution and in the Code of Criminal Procedure to persons deprived of their liberty were not in practice applied to individuals detained in the custody of the Political Security Office. He wished to know whether that information was correct, how the Office functioned and what its detention premises were like. With respect to paragraph 22 of the report, he wished to know whether a system of legal aid existed for prisoners who could not hire a lawyer.

33. The standards established in the Constitution clearly were lower than those set out in the Covenant. Accordingly, full compliance with the Covenant must be assured through legislation or through the direct invocation of rights before the courts. He wished to know whether the rights and interests which citizens were entitled to protect before the courts were the rights enshrined in the Covenant.

34. Mrs. MEDINA QUIROGA expressed concern at the absence in the Constitution of a specific provision protecting the right to life. She associated herself with the request from earlier speakers for far greater detail regarding the measures taken to implement the Covenant.

35. With reference to paragraph 74 of the report, she wished to know what type of acts were designated as offences for short or specific periods of time and why, once there was a national consensus that a particular act no longer constituted an offence, it was still punishable. She also sought an explanation of the reference in paragraph 87 of the report to a political party or organization which opposed religion.

36. Mr. BRUNI CELLI said that the Committee would appreciate additional data on instances in which the death penalty had been imposed in recent years and whether legislation would be amended to decrease the number of crimes for which the death penalty was applicable. The initial report submitted by the Government of the People's Democratic Republic of Yemen (CCPR/C/50/Add.2) had specified that the death penalty was imposed when it was considered necessary to protect society and when it was deemed that a prison penalty would not correct the behaviour of the criminal. Since there was no specific list of crimes for which the death penalty could be imposed, it was unclear how sentencing was determined. Paragraph 17 of the current report, which dealt with the prohibition of torture and cruel treatment or punishment, stated that article 33 of the Constitution stipulated that "degrading and inhuman forms of treatment shall not be permitted when executing penalties". The reporting State should clarify whether it considered the amputation of limbs to be cruel and inhuman punishment and how such punishment could be reconciled with article 33 of the Constitution and article 7 of the Covenant.

37. Mr. KLEIN said that the Committee would appreciate additional information on political prisoners in Yemen. It would be helpful if the reporting State could confirm reports that Mansour Rajih, a poet, had been in prison for an extended period of time and provide any additional information regarding his and other such cases. He asked whether any efforts had been made to address the problem of overcrowded prisons. For example, in the central prison of Sana'a a facility intended to house 800 prisoners, there were currently more than 2,000 inmates. As stated in paragraph 28 of the report, article 32 of the Organization of Prisons Act No. 48 provided for juveniles to be isolated from adult prisoners. He asked how it was possible to observe that provision in view of such overcrowding.

38. The Committee had received reports of executions of children and juveniles, including the case of a 13-year-old boy who had been executed in public in 1993. He would appreciate more information regarding that and any other cases in which children had been executed or sentenced to death and were awaiting execution. Details on how the death penalty was carried out in general should also be provided.

39. With regard to article 7 of the Covenant, the Committee wished to know which forms of corporal punishment were permitted under the Code of Criminal Procedure and in which cases amputation and whipping were allowed. The reporting State should also indicate whether any individuals had died as a result of corporal punishment and whether persons subjected to such punishment were allowed to receive medical treatment if necessary.

40. With regard to the issue of freedom of the press, he asked how many newspapers had been banned and forced to cease publication. Information on the

practical ways in which laws to protect human rights were applied would be welcome.

41. Mrs. HIGGINS welcomed the efforts of the representative of Yemen to answer the Committee's oral questions under section I; however, while there were some very good aspects to the Constitution, such as the provisions under article 32, it had failed to protect certain rights guaranteed under the Covenant. The Committee would appreciate more specific information regarding allegations of torture in Yemen. States parties to the Covenant had the responsibility to observe article 7 and to investigate all such allegations.

42. Mr. AL-HUBAISHI (Yemen) thanked the Committee for helping his country to resolve the many problems it faced in enforcing international human rights standards and noted that some of the reports which the Committee had received had been drafted immediately following the civil war and concerned events that had taken place during the fighting. Since that time, the situation had improved in his country. He had attempted to respond to the Committee's questions from both a legal and a practical standpoint and to provide specific answers.

43. He wished to clarify his previous statement concerning excision: he had said that the custom of female excision had been prevalent, and not that it was prevalent. With regard to reports of illegal executions, he said that such executions had occurred immediately following the fighting. In general, any illegal execution that was discovered was severely punished, even during time of war. He was not aware that any minors or juveniles had been executed; however, if the Committee could provide specific names, investigations regarding those cases would be conducted. The problem of individuals bearing arms without licence was one that his Government was attempting to address. In rural communities, however, traditions were strong and men continued to carry weapons such as daggers. A law had been introduced and the population had been warned that those bearing weapons without a licence should lay down their arms or be prosecuted. Nevertheless, it would take some time for people to change, particularly in the countryside, where it was believed that the right to bear arms was a matter of self-defence.

44. With regard to the Supreme Council of Justice, he could provide general information only. The Council was composed of senior judges, the Attorney-General and some members of the Supreme Court. Members of the Council were appointed rather than elected, and only senior judges could be chosen to sit on the Council. The Supreme Council of Justice was responsible for ensuring that judges were properly appointed.

45. The Constitution of Yemen provided a set of general principles to guide legislators in drafting laws. Therefore, when examining how the provisions of the Covenant were implemented in practice, it was necessary to look at the entire body of laws and not merely at the Constitution.

46. Clarifying his statement that individuals whose rights had been violated could present their complaints to the appropriate courts, he added that civil procedures were also available to detained individuals. If the Government was made aware of cases of illegal detention by the judicial police or security

forces, it took steps to put an end to the detention, if appropriate, and imposed sanctions on those responsible. The family of the detainee could present its case in the press or to the authorities. Legal aid was available and attorneys were provided free of charge to those individuals who could not afford to pay.

47. In reply to Mrs. Medina Quiroga's question regarding article 8 of the Political Parties and Organizations Act No. 66 of 1991, which prohibited the establishment or continued activity of any political party which opposed religion, he said that non-practising Muslims in Yemen were not forced to follow religious rites. However, atheist parties that did not recognize the existence of a religion were not acceptable in a traditional Muslim society.

48. In reply to Mr. Klein's question, he said that Mansour Rajih had been accused of voluntary homicide and his case was currently before the courts.

49. Since 1962 the Government had been making an effort to build prisons which met international standards. The prison in Sana'a was not new and was being enlarged in order to alleviate overcrowding. There were currently only four categories of prisoners held in isolation cells. A group of judges had recently visited certain prisons and released a large number of prisoners who had finished their sentences or had not been brought before the courts within the time required. He did not have any statistics on the number of prisoners executed, but would provide them to the Committee in due course. He did not know of any case involving the execution of a child, which would be contrary to the law as well as the traditions and beliefs of the Yemeni people. If the Committee provided him with a specific name, the case would be investigated.

50. The amputation of hands and feet as a form of punishment was practised in some Islamic countries. Many regarded that as a religious question, and it served to deter crime. Under Yemeni law, the authorities sought to decrease the number of such cases through penal procedures. As a result, amputation was only very rarely used as a form of punishment.

51. With regard to the press, he said that no newspaper had been arbitrarily shut down. A newspaper which had been sued by the Government had recently been exonerated by the court and was still being published. The newspaper referred to by Mr. Klein was no longer in operation because of a lack of newsprint, which was difficult to import owing to foreign currency limitations. The owner of the Yemen Times had been detained not because he was a journalist, but because he had held a meeting without permission from the authorities during a state of emergency. The other persons who had been detained at the time were not journalists and had been released several hours later.

52. He noted that the Government intended to amend Yemeni legislation in order to reduce the number of cases involving the imposition of capital punishment.

53. Mr. KRETZMER said that the delegation had not replied to the questions raised concerning the use of flogging and corporal punishment in general.

54. Mr. BUERGENTHAL inquired whether juveniles under the age of 18 could be executed under Yemeni law.

55. Mr. Al-HUBAISHI (Yemen) said that flogging was not provided for under Yemeni law but was a punishment imposed under Shariah. It was practised in prisons as a disciplinary measure and was sometimes used as a substitute for long prison sentences. Children and minors were not executed in Yemen. There were no cases in which persons under the age of 21 had been executed.

56. Mrs. EVATT said it was clear that the civil upheaval and economic problems had affected Yemen's implementation of its obligations under the Covenant. The Committee had not been able to engage in a full dialogue owing to a lack of sufficient information, particularly with regard to human rights violations during the civil upheaval and its aftermath, and the manner in which they had been handled. A number of positive aspects had been brought out, including the legal status of the Covenant under the Yemeni Constitution and the new provisions on the judiciary. The position of women had improved, and there was a commitment to making further progress in that regard. Nevertheless, the status of women according to the letter of the law did not appear to be in conformity with the Covenant. The relevant laws should be brought into line with Yemen's obligations in that regard. Specifically, much more had to be done to ensure de facto equality of women with regard to education and literacy in order to ensure full enjoyment of their civil and political rights.

57. There was a lack of information on the implementation of many articles of the Covenant, and the practice with regard to articles 6, 7, 9 and 10 remained unclear. With regard to the execution of minors, she referred to the case of Nasser Al-Kirbi, a 13-year-old who, according to a report by Amnesty International, had been executed with three others on 21 July 1993. The continued overcrowding of prisons and the laws on freedom of expression were also matters of concern. Nevertheless, she had been encouraged by the dialogue that had taken place with the delegation of Yemen.

58. Mrs. MEDINA QUIROGA said that both culture-specific behaviour patterns and economic problems could delay the changes that were necessary in order to implement the provisions of the Covenant. The Yemeni Constitution was the supreme law of the land, and it was essential that all basic human rights should be enshrined in it. She did not feel that the right to life was guaranteed under the Yemeni Constitution, a serious lacuna that might lead to infringement of that right by the Government. The representative of Yemen had said that a number of questions raised by the Committee were religious questions. It should be kept in mind that some human rights problems were caused by religious beliefs.

59. The next periodic report should indicate how the Government promoted the interpretation of Yemeni laws in accordance with the provisions of the Covenant. The delegation had stated that the Yemeni Government had the right to veto a law. The Committee would expect the Government to veto a law which ran counter to the Covenant.

60. The problems affecting the status of women did not relate solely to education and development; religion also played a role. Marriage contracts, for example, stipulated that the property of a woman was transferred to her husband, on whom she depended entirely. Thus women had no rights in that regard under

the Constitution. She hoped that Yemen would take into account the provisions of the Covenant and implement them as much as possible.

61. Mr. KLEIN said that, although he appreciated the attempt by the delegation to provide complete answers to the questions raised by the Committee, major issues, such as the status of women, corporal punishment and capital punishment for juveniles, remained unresolved. The next report should take account of the Committee's recommendations and provide more information on legislation to protect human rights in accordance with the Covenant.

62. Mr. BUERGENTHAL said he was impressed with the manner in which the representative of Yemen had endeavoured to explain the problems that arose in the legal and religious environment in which the Covenant was to be implemented. He shared the concerns of his colleagues that there were conflicts between the Covenant and the laws and the Constitution of Yemen. He was particularly concerned about discrimination against women, the imposition of the death penalty and the use of corporal punishment. The representative of Yemen had stated that persons under 21 years of age were not executed in that country. Paragraph 23 of the report, however, suggested that an accused person over 15 years of age would be treated as an adult and might be executed. There was nothing in the report that indicated that that was not the case. The representative of Yemen had said that corporal punishment was carried out not under the law, but in accordance with Shariah. Article 3 of the Constitution, however, stated that Shariah was the main source of legislation in Yemen. A number of such contradictions remained unresolved.

63. Mr. FRANCIS said that he supported the comments made by previous speakers. Although some of the answers provided had not been clear, the dialogue had been very useful. He drew attention to a report which indicated that female genital mutilation was practised in the southern coastal areas of Yemen but not in Sana'a and the north; he hoped that the representative of Yemen could use that information to help the Government rectify the situation.

64. Mr. AL-HUBAISHI (Yemen) said that he regretted any lack of information in his replies to the questions raised by the Committee. If the questions could be submitted in writing, he would answer them promptly and also submit a translation of the new Constitution and other laws.

The meeting rose at 6.05 p.m.

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Fifty-third session

SUMMARY RECORD OF THE 1405th MEETING

Held at Headquarters, New York,
on Friday, 31 March 1995, at 10 a.m.

Chairman: Mr. AGUILAR

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This record is subject to correction.

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Any corrections to the records of the public meetings of the Committee at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

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The meeting was called to order at 10.30 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (continued)

Initial report of the United States of America (continued) (CCPR/R/C/81/Add.4; HRI/Corr.1/Add.49)

1. At the invitation of the Chairman, Mr. Aleinikoff, Mr. Di Gregory, Mr. Harper, Ms. Harris, Ms. Homer, Mr. Patrick, and Mr. Shattuck (United States of America) took places at the Committee table.

2. Mr. SHATTUCK (United States of America) said that the depth of the United States commitment to civil liberties was demonstrated by its long and often painful struggle fully to achieve them. In such areas as freedom of speech, freedom of the press, freedom of association and freedom of religion, its system of laws and practices allowed greater freedom than the Covenant required. Its framework of tribal self-governance and self-determination of Native Americans was stronger than similar arrangements in other States, and its network of non-governmental organizations was the most extensive of any nation in the world.

3. Many members had asked whether the United States would immediately propose any further legislation to implement the Covenant. In the initial report, the conclusion was reached that the Constitution and federal law were in compliance with the obligations assumed in ratifying the Covenant; therefore, implementing legislation would not be enacted. If such a need was identified during the course of implementation, however, consideration would certainly be given to the adoption of such legislation. Concern had also been voiced that United States citizens had received no additional benefit from ratification of the Covenant, yet ratification was the beginning, not the end, of a process of progressive implementation of the benefits of human rights treaties into the system of civil and political rights. Ratification had already resulted in a comprehensive evaluation of United States legal protections of civil and political rights and had focused greater public attention on the review process. Such obstacles to progress in advancing civil and political rights as racism and gender discrimination, intolerance and economic distress remained, yet the system was founded on the principles of freedom of expression and equal protection, structured to encourage positive change resulting from open and informed debate under the rule of law. The United States wholeheartedly agreed with the principle that States must actively guarantee human rights, as illustrated by its ratification of the Covenant and other human rights treaties and the constitutional framework which provided protection for civil and political rights.

4. Several specific actions had been taken or were planned with regard to implementation of the Covenant. Prior to ratification, a comprehensive analysis of United States law in relation to the Covenant's provisions had been conducted, which had been submitted to the Congress and reviewed by its members during the debate on ratification. The text of the Covenant had been published in the Federal Register, the official daily bulletin of the Government.

Analyses of the Covenant had been provided to the attorneys-general of the states for distribution to state officials concerned with civil and political rights. Government officials had discussed the implications of ratification in panels organized by non-governmental organizations, legal experts and academic institutions. The Government agreed with the Committee's recommendation that it should engage in regular consultation with state authorities to discuss state involvement in implementation. It would consider establishing an inter-agency working group at the federal level to centralize implementation activities.

5. Many judges were well informed regarding the provisions of the Covenant and many more would become educated through invocation of the Covenant by litigants. He agreed with Mr. Lallah's recommendation that the Government should make use of the Federal Judicial Center to increase awareness of the Covenant, and Mrs. Evatt's suggestion that state judicial centres should be used in a similar fashion. The report had been distributed to state attorneys-general, the various state bar associations, the many offices and agencies responsible for civil and political rights, the academic community and to interested non-governmental organizations. The document was also available electronically through the Internet.

6. In reply to Mr. Pocar and Mr. Mavrommatis, there would be a continued effort to ensure that new legislation would be in conformity with the Covenant. In addition, the Government would conduct a review of how its responsibilities under the Covenant were being implemented and the need for maintaining its reservations, understandings and declarations with the aim of achieving full implementation of the Covenant within the framework of representative democracy. Public information efforts would be broadened and efforts would be made to expand the knowledge of the Covenant and its relationship to United States law at the state level and among the judiciary. Note had been taken of recommendations from Committee members regarding increased involvement of the states in the review process and in the preparation of subsequent reports.

7. Mr. HARPER (United States of America) said, with respect to the reservations, understandings and declarations of the United States, that several Committee members had expressed concern over the decision to declare the Covenant non-self-executing. That declaration was not a reservation and did not limit international obligations under the Covenant. It only meant that the Covenant could not, in and of itself, provide a cause of action in United States courts. Most members would agree that nothing in the Covenant generally, or article 2 in particular, required States parties to make it self-executing under their domestic law, and several other States parties did not do so. In fact, in article 2, paragraph 2, it was specifically contemplated that the Covenant could be implemented through legislation, rather than directly, and that existing legislation would be relied on as far as possible. The real question was not whether the Covenant should be self-executing, but whether the rights accepted by the United States in adhering to the Covenant were, in fact, guaranteed to people within the United States, and whether there was effective recourse and remedies in the event that those rights were violated. If it should be determined that United States law fell short of Covenant standards, then the necessity of corrective legislation would certainly be considered.

8. To clarify an apparent misunderstanding, the courts could refer to the Covenant and take guidance from it even though it was not self-executing. What the Covenant could not do was provide a cause of action. The United States had not declared the Covenant self-executing because it was not necessary to do so in order to satisfy its international obligations thereunder. Although the distinction between self-executing and non-self-executing treaties was of judicial origin, it was entirely appropriate for the President to propose such a declaration and for the Senate to condition its advice and consent to ratification on that basis. When the issue was tested in court, the views of the executive and legislative branches would be entitled to great deference.

9. In reply to Mr. El-Shafei, he said that the criteria for determining that the treaty was non-self-executing were derived from an early Supreme Court decision. The doctrine had since evolved to the effect that multilateral treaties should not readily be held self-executing.

10. The fifth understanding, relating to federalism, was not a reservation and did not exempt the United States from ensuring that state as well as federal law was in conformity with Covenant obligations. Rather, it concerned the steps to be taken domestically by the respective state and federal authorities to give effect to those obligations. Although, as Mr. El-Shafei had noted, some legal scholars had considered that understanding unnecessary, it seemed that they had not taken into account the strongly held views of members of Congress with regard to the effect of treaties on the respective responsibilities of the states and the federal Government. Currently, there were no federal inhibitions to state implementation: federal law provided a common standard of respect for fundamental civil and political rights applicable throughout the country. The federal Government had limited and delegated powers; those not delegated to the federal Government were reserved to the states and the people under the Tenth Amendment to the Constitution. The federal Government could not dictate the basic form or internal workings of state government, but it could establish and enforce uniform standards for the respect of civil and political rights, which could include direct invalidation of any offending laws at the state level. The state attorneys-general had been informed of the ratification of the Covenant and asked to review state laws to ensure that they were in conformity. None had informed the Justice Department of any deficiency. Traditionally, the states did not have a direct role in treaty negotiation or ratification, their interests being represented in the Senate's role in giving advice and consent.

11. The first understanding, concerning equal protection and protection against discrimination, had been drafted with general comment No. 18 in mind. It was difficult to conceive that a governmental objective could be legitimate under United States law if it contravened the fundamental civil and political rights which were protected by the Covenant. With regard to the second understanding, concerning compensation, few, if any, systems of domestic law provided an unqualified right to compensation in all circumstances involving unlawful arrest or detention or miscarriage of justice. Furthermore, the Covenant contained no definition of those terms, nor any authoritative interpretation of them in practice. The Government had, therefore, felt it prudent to state its understanding of the proper reading of those articles on the record. With regard to the fourth understanding, United States law recognized the double jeopardy principle. The purpose of the understanding was to note that, in

certain circumstances, subsequent prosecution by a separate sovereign was permissible, which was the general rule under customary international law and under United States domestic law.

12. Turning to the issue of the death penalty, he said that the decision to retain it reflected a serious and considered democratic choice of the American public. Elected officials were keenly aware of the views of their constituents on that issue and it was not appropriate in that democratic system to dismiss considered public opinion and impose by fiat a different view. It was important to note, moreover, that the Covenant clearly did not prohibit the death penalty; on the contrary, article 6 expressly contemplated that States might impose that penalty, but provided a number of requirements for when it could be imposed, which the United States fully accepted. The sometimes lengthy delay between conviction and punishment was due in large part to the extensive possibilities of seeking review and enforcement of constitutional guarantees of the right of appeal. The reference to future laws in the reservation clarified the fact that the possibility of imposing the death penalty was not limited to the precise laws existing at the time the Covenant was ratified, but could cover laws or amendments enacted in the future by which the penalty was imposed. It was not aimed specifically at types of punishments, but rather at particular types of crimes.

13. On the issue of the juvenile death penalty, he assured the Committee that the matter was being debated and that changes had not been ruled out. Nevertheless, United States laws currently favoured applying the death penalty in limited cases. A large majority of states permitted juveniles to be tried as adults in grave cases involving capital offences at the age of either 16 or 17. While it was legally possible to impose a higher limit at the federal level, it was a question of democratic decision-making and not legal possibilities.

14. It was generally accepted that children below a certain age should not suffer the death penalty no matter how terrible the crime. In the United States that age had been set at 16. The United States disagreed that customary international law established a clear prohibition at the age of 18. The only authority cited was the Convention on the Rights of the Child, which adopted 18 as the age of majority for all purposes, not specifically for the criminal area. Furthermore, widespread adherence to a treaty did not create customary international law. That was especially true for the Convention on the Rights of the Child, a major purpose of which was to create new obligations not already provided for by existing law. It was a matter of record that the drafters of the Convention actually intended to permit a reservation to that provision, as stated in documents E/CN.4/1986/39 and E/CN.4/1989/48.

15. The United States had also explained in its analysis of general comment No. 24 that there was no basis in international law for the view that a reservation could not be made to a provision of a treaty which reflected customary international law. The theory that no reservation could be taken to a non-derogable right, while popular, was also an innovative view and did not reflect existing law.

16. Responding to Mr. Ando's concern about religious education and public funding of schools which were affiliated to religious organizations, he reminded

the Committee of the strong historical and constitutional commitment in the United States to the separation of Church and State. Because of that principle, the Government could not and did not attempt to strengthen religious education in the public schools as Mr. Ando had suggested. However, there was growing concern in American society as a whole to support the development of strong family values as one important method of combating societal ills. Mr. Ando had also noted with regard to paragraph 570 of the initial report that federal funding was more readily available to religiously affiliated institutions of higher learning than to institutions of secondary education. The United States Supreme Court had given two reasons for upholding the constitutionality of that policy. First, college students were less impressionable and less susceptible than younger children to religious indoctrination, and second, church-related institutions of higher learning tended to be less religious than their counterparts at the elementary and secondary levels.

17. Regarding Mr. Ando's inquiry about judicial review in cases where an individual had been denied a passport, he stated that the revocation or denial of passports were matters that were fully subject to such review. A procedure for independent administrative review, described in paragraph 307 of the report, had also been established.

18. On the issue of organized labour, he said that federal, state and local government employees generally had the right to organize and bargain collectively. Federal employees were prohibited from participating in strikes. Similarly, strikes or work stoppages by state and local government employees were generally prohibited by statute or judicial decision. They did, of course, have other effective means for resolving grievances or disputes. Regarding United States participation in the International Labour Organization (ILO), he explained that the United States had always strongly supported the machinery designed to promote freedom of association which had been implemented by that organization, and it had always cooperated fully with ILO whenever complaints had been filed against the United States by either American or international labour organizations. In such cases, the Committee on Freedom of Association had found United States law and practice to be generally in conformity with the broad principle of freedom of association enshrined in the ILO Constitution. No freedom of association complaints were currently pending against the United States Government.

19. Responding to Mr. Lallah's question concerning political opinion as a ground for non-discrimination in employment, he said that the United States was currently considering ILO Convention No. 111, which included such a provision, with respect to its compatibility with domestic law. One potential obstacle to enforcement of such a prohibition against private employers would be the First Amendment. Naturally, because of the protections of the First Amendment, political opinion or orientation was rarely a prerequisite for employment, at least in the private sector.

20. Mr. Klein had asked whether the United States took the view that the Covenant did not apply to government actions outside the United States. The Covenant was not regarded as having extraterritorial application. In general, where the scope of application of a treaty was not specified, it was presumed to apply only within a party's territory. Article 2 of the Covenant expressly

stated that each State party undertook to respect and ensure the rights recognized "to all individuals within its territory and subject to its jurisdiction". That dual requirement restricted the scope of the Covenant to persons under United States jurisdiction and within United States territory. During the negotiating history, the words "within its territory" had been debated and were added by vote, with the clear understanding that such wording would limit the obligations to within a Party's territory.

21. With reference to Mr. Prado Vallejo's questions about the Cuban trade embargo, he rejected the suggestion that the right to self-determination made it necessary for two countries to have trade relations. The Cuban people did not enjoy the right to self-determination, because they lived in one of the world's few remaining totalitarian regimes.

22. Mr. PATRICK (United States of America), referring to questions asked on the subject of voter registration and participation in elections, said that although registration was largely left to the individual states, the Government was committed to eliminating all unfair barriers. The Voting Rights Act of 1965 had removed a number of them, including literacy tests; and the Government would not tolerate intimidation or other impediments to voting freedom. The National Voter Registration Act, introduced in 1993, was intended to make it easier to register; people were encouraged to do so when applying for driving licences or conducting other business at the offices of governmental agencies. Considerable improvements were being achieved in the number of people registering to vote. Also, areas with significant minority language communities were increasingly providing election information in the languages concerned.

23. In reply to a question regarding cases in which electoral districts had been redrawn in such a way as to improve the representation of minorities, he said that the Government believed that such measures were desirable, although their constitutionality had been questioned. As to the voting status of residents of the District of Columbia, they were entitled to vote in elections for President and Vice-President, and they elected their own mayor and other local representatives; there was also a non-voting delegate for the District of Columbia to the House of Representatives.

24. Referring to a question on language rights, he said that linguistic minorities were entitled to equal protection under the law, and were protected from discrimination. Over 30 million United States citizens spoke a language other than English in their homes. English-only rules were prohibited in the workplace unless the employer could show that such a rule was justified by a business necessity. Students who were speakers of minority languages were entitled to equal benefits in federally assisted school systems, and educational agencies were required to overcome language barriers that prevented equal participation in educational programmes. The United States was committed to making education accessible to all students regardless of their proficiency in English; millions of dollars were spent each year on bilingual education services.

25. Referring to questions regarding the treatment of women in prison, he said that sexual abuse in prison was a violation of federal criminal statutes; several allegations of abuse and invasion of privacy had been investigated by

the Civil Rights Division of the Department of Justice. The Government's efforts to protect prisoners from unnecessary force and arbitrary physical abuse took three forms: training, administrative sanctions, and criminal prosecutions. There was also a well-established scheme for punishing federal prison personnel who abused inmates. In order to protect the privacy of female inmates, only female officers were permitted to conduct strip searches or body cavity searches, except in emergency situations; and male officers were admonished to respect the privacy of female inmates.

26. A member of the Committee had expressed concern about special maximum-security prison conditions. A very limited number of the prison population (about 0.4 per cent) were held under such conditions, which were intended for extremely violent inmates.

27. It was expected that the 1994 Crime Bill would lead to an increase in the prison population; the Government planned to spend several billion dollars on new prison construction. As for the proposal of one prison commissioner to reinstitute chain gangs, the Justice Department would look into the matter very closely if the proposal was, in fact, accepted.

28. Whenever conditions of incarceration violated constitutional standards, several forms of recourse were available to inmates. In addition to prison grievance systems, there were a number of state and federal mechanisms. Over the past 15 years, the Department of Justice had taken action to improve conditions in more than 60 jails throughout the United States.

29. Referring to questions regarding scientific experimentation, he said that the Justice Department had the authority to investigate non-consensual medical experimentation on institutionalized persons. The Department had conducted numerous investigations and lawsuits of institutions for the mentally retarded and for the mentally ill, but had in no case discovered evidence of systematic abusive practices. The newspaper article which had been referred to by a member of the Committee concerned individuals who had been medicated with the consent of their relatives or guardians.

30. Additional information had been requested regarding the use of drugs in experimental research, referred to in paragraph 179 of the report. Informed consent was required in all cases except life-threatening situations, and there was a requirement in all cases for a preliminary determination by the Food and Drug Administration that the drug was sufficiently safe for testing on humans. In addition, there had to be a therapeutic purpose. Otherwise, the testing of experimental drugs on humans was not permitted, irrespective of federal funding.

31. Referring to expressions of concern by members of the Committee on the subject of the initiative in California known as Proposition 187, he said that the federal Government shared that concern. The initiative had raised objections in many quarters, and was being challenged by a coalition of advocacy groups on a number of constitutional grounds. Pending the resolution of legal challenges, the measure was not being implemented.

32. A member of the Committee had expressed concern about the status of children born out of wedlock. The Supreme Court had held that punishing parents

by imposing disadvantages on such children was contrary to the basic concept of individual responsibility; being born out of wedlock was a situation out of the control of the child, and he or she should not be punished for it.

33. With reference to questions regarding segregation in education, the constitution and laws of the United States prohibited any action to separate students on the basis of race, and no entity receiving public funds could provide inferior educational resources or otherwise treat students differently on such a basis. Accordingly, the Department of Justice was engaged in litigation, negotiations and monitoring in hundreds of school districts across the country to eliminate the vestiges of segregation. It was, however, necessary to distinguish between racial patterns that resulted from the actions of public authorities and those that were the result of individual choices about where to live. The Civil Rights Division was also responsible for enforcing laws preventing discrimination in housing.

34. Affirmative action in favour of women and minorities had existed for about 25 years in the areas of education, employment and government contracting. Private industry and universities were engaged voluntarily in similar measures. The Supreme Court had permitted such efforts as long as they were flexible, did not sacrifice merit and did not unfairly divest whites of vested rights. The courts had supported legitimate uses of affirmative action as one mechanism to promote opportunities for previously excluded citizens.

35. A review of government programmes relating to affirmative action was under way, but he emphasized that there would be no retreat from the Government's commitment to the goal of expanding opportunity for all United States citizens in education, employment and the economy generally. As long as some barriers, and the effects of previous ones, remained for minorities and women, the Government would remain vigilant in enforcement of anti-discrimination laws.

36. In reply to a question regarding sexual discrimination, he said that the Constitution provided that no person could be denied the equal protection of the laws based on gender or race. Although there were differences between men and women that could in rare cases justify differential treatment, the Supreme Court rarely upheld distinctions based solely on sex, and would not uphold a distinction denying women any of the fundamental rights guaranteed by the Covenant. The Civil Rights Division was involved in enforcement of several statutes specifically protecting the rights of women and outlawing discrimination in housing, education, equal access to credit, and employment.

37. Referring to questions relating to discrimination on the basis of sexual orientation and the right of privacy for sexual minorities, he said that such minorities were entitled under the United States Constitution to equal protection of the laws, and there were state and local laws which included sexual orientation as a protected category. It was highly unusual for any state to prosecute anyone for private, consensual sexual activity.

38. Responding to a request for clarification of the term "legitimate governmental objective" in reviewing a classification for constitutional validity, he said the Supreme Court had recognized that the great majority of government classifications in laws drew distinctions among groups of persons

that did not discriminate against any person or group, but rather promoted legitimate government interest in efficiency, addressing particular public problems, and accommodating competing needs. Invidious discrimination based on status, or a desire to harm a politically unpopular group was never a legitimate governmental objective.

39. A number of members had asked whether hate speech could be equated with obscenity, such that it would receive no protection under the First Amendment to the Constitution. The Supreme Court had declared that hate speech, although offensive, was protected by the First Amendment unless accompanied by certain violent actions. Racist words alone did not constitute a hate crime. The Department of Justice vigorously prosecuted acts of racial violence and cases involving threats to take violent action against racial minorities.

40. Replying to various other questions which had been raised by members of the Committee, he said that many statutes, as well as the Constitution, contained safeguards protecting the right of free association. Regarding "police brutality", there were criminal and civil statutes to remedy such violations, and over 100 cases involving the use of excessive force had been prosecuted; the Department of Justice also worked to prevent such abuses through training, lectures and seminars. Victims could also sue for compensatory and punitive monetary damages. Regarding sanctions against parties to a court case under the Federal Rules of Civil Procedure, the rules had been amended in 1993, allowing for opportunities to exist to cure any defect or argument before a motion for sanction could be allowed.

41. Ms. HARRIS (United States of America), responding to questions raised by Mr. Ando and Mr. Mavrommatis, said that the United States did not believe that the Covenant required a ban on firearms. The problem of firearms in the United States was addressed by a number of laws adopted by the Congress and by state and local legislation. Federal legislation, in addition to the Brady Bill and Assault Weapons Ban, was contained in Title 18 of the United States Criminal Code. Section 922 (a) of the Code prohibited interstate transactions in firearms except by federally licensed dealers. Section 922 (b) prohibited the sale of handguns to minors. Section 92 (g) prohibited convicted felons, persons under indictment for a crime, fugitives from justice and other classes of individuals from possessing firearms. Section 922 (o) prohibited the transfer or possession of newly made machine-guns. Section 922 (p) prohibited the manufacture, import, sale, shipment, delivery, possession, transfer or receipt of any firearm that was not detectable by a metal detector. Section 922 (q) prohibited the possession of a firearm in a school zone. Section 992 (x), a fairly new provision, prohibited the possession of handguns by juveniles. Section 924 (d) enhanced the penalties for the use of firearms in violent crimes or crimes related to drug trafficking. Section 924 (e) enhanced the penalties for repeat violent offenders who possessed a firearm at the time of arrest.

42. Responding to Mr. Lallah's question, she said that alternate jurors were selected at the same time as the regular panel of jurors. The alternates heard the evidence along with the other jurors in case they had to replace a regular juror. The number of alternate jurors and other details concerning their selection and service during the trial were determined under Federal Rule of Criminal Procedure 24 (c). The states applied similar rules.

43. Replying to a question asked by Mr. Francis, she said that an initial investigation had not confirmed that prisoners had been denied access to television or radio by a trial judge. As a general rule, however, trial judges did not determine conditions of imprisonment. At the state level, such conditions were determined by the Department of Correction in line with legitimate penal objectives.

44. In response to Mr. Ando's query concerning paragraph 525 of the initial report, she said that a judicial officer was defined as a judge, a magistrate judge or someone who was both neutral and detached and could make a probable cause determination. In response to another question raised by Mr. Ando concerning paragraph 518 of the report, she said that the issuing official was considered to be "neutral and detached" if he or she was not connected to the law enforcement authorities or involved in the investigation. In two cases, the Supreme Court had held that warrants were invalid - in Coolidge v. New Hampshire (1971), where the warrant had been issued by a state attorney-general acting as a magistrate who was also in charge of the investigation and the prosecution, and in Lo-Ji, Sales, Inc. v. New York (1979), where the warrant had been issued by a town justice who then participated in a search he had authorized.

45. Mr. DI GREGORY (United States of America) drew attention to a Bureau of Justice Statistics Bulletin entitled Capital Punishment 1993. The report, published in December 1994, contained statistics on both adults and juveniles. It did not include a statistic requested by Mr. Bhagwati - namely, that 36 persons under the age of 18 at the time of arrest had been sentenced to death. Two, both of whom had been 17 years of age at the time they had committed the offence, had been executed. Replying to Mr. Mavrommatis, he said that 31 of the 38 states with death penalty statutes imposed capital punishment only for murder and other serious crimes, including aggravated homicide. Seven states had extended the death penalty to certain serious non-homicidal crimes which involved grave risk of death to others or to society. Those crimes included treason, train-wrecking, aircraft hijacking, aggravated kidnapping and forcible rape of a child.

46. Replying to a question raised by Mr. Francis, he reiterated that the United States did not accept the concept of the "death row phenomenon" advanced by the European Court of Human Rights. On the contrary, it recognized that a prisoner might spend years in prison before the execution of the death sentence. The delay enabled defence lawyers to pursue every possible avenue of appeal and review. Most defendants had been tried in state courts and were eligible to appeal their sentences and convictions to the appellate court of the state in which they had been tried. In addition to those direct appeals, they could indirectly challenge their convictions by arguing that they had received ineffective assistance or counsel during the trial. They also had a limited right to have their convictions reviewed by the federal courts. While the appellate process was time-consuming, it was deemed to be an important safeguard in the American legal system.

47. Replying to Mr. Lallah's question concerning the appointment of competent counsel in cases of capital punishment, he said that defendants were entitled to be represented; counsel would be appointed if a defendant could not afford to engage someone. In the federal courts, defendants accused of capital crimes,

regardless of whether they were indigent, had the right to be represented by two lawyers. Where lawyers were court-appointed, one was generally experienced in capital cases. The current Administration and the Department of Justice were promoting legislation to ensure that defendants accused of capital crimes in the state courts were represented by experienced and competent counsel.

48. Concerning Mr. Mavrommatis's question about approximately 60 new grounds for capital punishment contained in the Violent Crime Control and Law Enforcement Act of 1994, he said that constitutional and federal statutes limited the death penalty to the most egregious crimes that posed an extremely grave risk to society. Generally, capital punishment was imposed for the most aggravated offences involving murder. It was applicable if the defendant had intentionally killed the victim, inflicted serious bodily injury that resulted in death, participated in an act knowing that death would result or had participated in an act of violence with reckless disregard for human life which had resulted in death. Federal law also authorized the death penalty for non-homicidal offences which caused serious harm to the nation, including espionage and treason. Drug kingpins who trafficked in extremely large quantities and whose profits were twice the amount of those punishable by life imprisonment and drug kingpins who attempted to murder or order the murder of public officers, jurors, witnesses or their families in order to obstruct justice were also subject to the death penalty.

49. In 1994, the United States Congress had enacted legislation establishing constitutional procedures for the imposition of the death penalty under federal law where it had already existed under 15 particular statutes. It had established 29 new capital statutes for a combined total of approximately 60 offences. Fifty-six of those crimes involved aggravated homicide resulting from violent crimes, such as kidnapping, child sexual abuse and terrorist acts. Four of them involved non-homicidal offences which caused grave harm to the nation.

50. Responding to Mr. Lallah's question about methods of execution, he said that, under the United States Constitution, no sentence, including a death sentence, could be carried out in an inhumane or barbaric manner. The five methods of execution currently employed by states which had death penalty statutes included lethal injection, electrocution, lethal gas, hanging and firing squads. Hanging and firing squads were being phased out, however, and the trend nationally was towards lethal injection.

51. Responding to a question raised by Mr. Mavrommatis and Mr. Lallah, he said that a number of states did not have laws which affirmatively expressed a prohibition against the execution of pregnant women. With the adoption of the recently enacted Violent Crime Control and Law Enforcement Act of 1994, the United States Congress had expressly prohibited the execution of pregnant women (United States Criminal Code, Title 18, section 3596 (b)). The lack of affirmative laws in no way suggested that a death sentence would be even theoretically contemplated in such circumstances. The delegation appreciated the Committee's concern but believed that the issue did not pose a problem.

52. Responding to Mr. Bruni Celli and other Committee members who had inquired about the period 1972-1976, when the death penalty had been temporarily halted by the Supreme Court, he said that the United States Supreme Court had never

held the death penalty to be unconstitutional. In 1972, the Supreme Court had held that existing death penalty sentencing procedures did not meet the constitutional requirements for reliability and individual consideration. It had not, however, held that the death penalty in and of itself was unconstitutional. In 1976, the Supreme Court had upheld revised sentencing procedures established by the State of Georgia, which required consideration of specific aggravating factors imposing the death penalty, and of relevant mitigating factors that ensured individual treatment of each defendant. Sentencing procedures in other states which provided similar guidance to the sentencing authority had also been found to be constitutional. In the 1976 decision upholding the revised procedures, three of the Supreme Court justices had cited two centuries of precedent recognizing that capital punishment was not invalid.

53. Replying to questions raised by Mrs. Medina Quiroga and Mrs. Higgins concerning racial discrimination and capital punishment, he said that United States law expressly prohibited the imposition of the death penalty on the basis of race and required that each capital case should be considered on an individual basis. He read out Title 18, section 3592 (f) of the Federal Criminal Code, which required a jury deliberating a death sentence to be instructed not to consider the race, colour, religious beliefs, national origin or sex of the defendant or of any victim and not to recommend a sentence of death unless it would have recommended that sentence for the crime in question regardless of such criteria. In returning its findings, the jury was also required to submit a certificate signed by each juror declaring that his or her decision was not based on discriminatory criteria and that he or she would have made the same recommendation regardless of the race, colour, religious beliefs, national origin or sex of the defendant or victim.

54. Replying to Mrs. Higgins's question, he said that the Racial Justice Act contained two key provisions. The first prohibited the execution of any person under state or federal law if the sentence had been imposed on the basis of race; the second provided that an inference that a death sentence had been imposed on the basis of race could be established if there was valid evidence demonstrating that race had been a statistically significant factor in the decision, at either the state or federal level. The United States House of Representatives had adopted the Racial Justice Act as part of comprehensive anti-crime legislation referred to as the Crime Bill of 1994. The Senate had adopted a version of the Crime Bill which did not include the Racial Justice Act. The Supreme Court had held that, for purposes of constitutional analysis, statistical evidence of racial discrimination was not sufficient to support an inference of an unacceptable risk of racial discrimination in the imposition of the death sentence. Its reasoning was that the capacity of prosecutorial discretion to guarantee individualized justice was firmly entrenched in United States law. Leniency could also be considered a form of discrimination; however, ruling out leniency was alien to the United States system of justice.

55. In an effort to ensure that capital punishment imposed by federal courts would be handled in a fair and consistent manner, in early 1995 the United States Attorney-General had established a process for the review of each case by the Attorney-General in the light of any mitigating factors, including evidence of racial bias against the defendant or evidence of discrimination by the

Department of Justice. Prior to the establishment of that procedure, three United States district courts had thoroughly reviewed the files of the Department of Justice on all death penalty cases, most recently in May 1994. Each of the three courts had found no indication of racial bias in decisions to impose a sentence of capital punishment. One court had stated that, if anything, the criteria, policies and procedures of the Department of Justice demonstrated a heightened concern to ensure that the death penalty was not unfairly imposed on grounds of race or ethnic origin.

56. In response to concerns expressed by a number of Committee members concerning juveniles between 16 and 18 years of age, he said that federal statutes prohibited the execution of persons who had been under 18 years of age at the time they committed a capital crime. Those statutory provisions exceeded the requirements of the Constitution, which prohibited capital punishment if persons were 16 years of age at the time the crime had been committed. The Constitution required that, regardless of age, the relative youth or immaturity of a defendant must be considered if raised in mitigation. Addressing Mr. Bhagwati's concern about the execution of mentally retarded persons, he said that federal statute prohibited the execution of persons who were mentally retarded or disabled to a degree which prevented them from understanding the nature of the proceedings against them, the nature of the punishment and the reason for its imposition. The Constitution also required that evidence of mental retardation or mental illness must always be considered if offered in mitigation, regardless of the degree of such condition. Concerning Mr. Bhagwati's question about the number of mentally retarded persons executed since 1972, he said that the Bureau of Justice did not maintain statistics on the mental capacity of persons sentenced to death.

57. Mr. ALEINIKOFF (United States of America), replying to a question raised by Mr. Ando, said that the United States had acceded to the 1967 Protocol relating to the Status of Refugees, worked closely with the United Nations High Commissioner for Refugees (UNHCR) and was a member of the UNHCR Executive Committee. It helped to resettle over 100,000 refugees annually through its overseas refugee programme. While there was no formal review procedure for refugee status determinations made overseas, unsuccessful applicants could request the Immigration and Naturalization Service to reconsider its determinations or hear new evidence.

58. The Office of the Immigration Judge received claims for refugee protection from persons within the United States. Its judges were administrative officials who were part of the Department of Justice. Their decisions on deportability and relief from deportation were reviewable by a specialized administrative appeal board.

59. In response to questions raised by Mr. Prado Vallejo and Mr. Klein, he said that the United States did not construe the Covenant as imposing obligations on a State party outside of its territory. However, in its safe haven programme for Cubans and Haitians in Guantanamo Bay, Cuba, the United States had made every effort to create humanitarian conditions in Guantanamo, including the provision of shelter, schools, Creole- and Spanish-language newspapers and radio, access to telephones, a specially created mail service, and expert medical care.

60. Replying to Mr. Kretzmer's question concerning excludable aliens, he said that the Supreme Court considered due process for excludable aliens to be such process as Congress provided. The immigration statute provided for proceedings before an immigration judge in order to determine excludability, the opportunity to apply for asylum or other relief and an administrative review process. Excludable aliens also had the right to seek habeas corpus review in the federal courts under the normal procedure for the review of agency action.

61. The statute provided for the detention of aliens who did not appear to be admissible. Accordingly, some aliens were detained while their exclusion proceedings were in progress or pending a final order for their release. In practice, however, most aliens who appeared to be excludable were not detained. Special procedures were in place to ensure that aliens who remained in detention received expedited consideration in the immigration courts. The Immigration and Naturalization Service did not maintain statistics on the number of aliens who appeared to be excludable and were detained. The average length of detention in 1994 for both exclusion and deportation cases was 26 days. That period was longer for those who pursued appeals or, in rare cases, where removal upon a final order was delayed. Aliens could seek parole where their continued detention was not in the public interest or other circumstances warranted release. Parole decisions were reviewable in federal court.

62. Responding to another question asked by Mr. Prado Vallejo concerning the "Mariel Cubans", he said that, in 1980, approximately 125,000 Cubans had entered the United States through irregular channels. Most had been initially detained but later released. Approximately 2,000 to 3,000 persons suspected of having had criminal records in Cuba had been initially detained. Of that group, only two persons had remained in custody since their arrival in 1980 because of psychiatric and other medical problems. Currently, about 1,400 other Mariel Cubans were in the custody of the Immigration and Naturalization Service or the Bureau of Prisons. All of them had been convicted of serious crimes after being admitted to the United States. At the conclusion of their prison sentences, the Immigration and Naturalization Service had revoked their parole; they remained in custody pending their return to Cuba. The cases of each Mariel Cuban in detention were reviewed annually by the Service; about half of the detainees were released once it was determined that they would not pose a danger to the community.

63. Replying to Mr. Kretzmer's inquiry about Haitians interdicted on the high seas, he said that the United States had worked with UNHCR to open a safe haven for Haitians at Guantanamo Bay in 1994. The standard for granting safe haven was much lower than the refugee standard. With the restoration of democracy in Haiti, most Haitians in Guantanamo had returned to Haiti of their own accord. Before ending the safe haven programme, the United States had interviewed all those who still considered repatriation unsafe. On the basis of those interviews, a small number of Haitians remained in safe haven in Guantanamo.

64. Replying to a constitutional issue raised by Mr. Bhagwati concerning legal representation for the poor, he said that indigent criminal defendants had a constitutionally protected right to court-appointed counsel; states and localities provided that service through Public Defender Offices. In addition, the Legal Services Corporation offered legal representation to the poor and fee-

shifting statutes provided for funding for counsel for the poor. The Equal Access to Justice Act awarded attorney fees to private parties who, in certain circumstances, prevailed in litigation against the United States. Under another federal fee-shifting statute, attorney fees were awarded to successful plaintiffs in certain civil rights actions against the states. In addition, many attorneys, encouraged by professional associations and law firms, assisted the poor without compensation. In law school clinics, law students represented poor clients under the supervision of an experienced attorney. Legal representation was also offered by a wide network of voluntary agencies and social service organizations.

65. Concerning the use of corporal punishment on children, the United States had entered a reservation to article 7 of the Covenant and considered itself bound by that article only to the extent that the protections it provided were consistent with the Fifth, Eighth and Fourteenth Amendments to the United States Constitution. Corporal punishment of children was rare; however, the United States Supreme Court had expressly held that it could be used on children under certain circumstances in conformity with the Eighth Amendment on cruel and unusual punishment. When the use of corporal punishment by public institutions exceeded constitutional limits, private legal action could be brought under federal statutes against state officials. If the lawsuit was successful, the plaintiff's attorney fees must be paid by the defendant.

66. Replying to a question concerning the provision of compensation to the subjects of radiation experiments conducted in the 1940s, he stressed that the United States Government had taken the initiative in disclosing those experiments and considering means of redress for the subjects. In December 1993, the Secretary of the Department of Energy had confirmed that individuals had been subjected to injections of plutonium as part of an experiment conducted by the Atomic Energy Commission in the 1940s and the Department had begun investigating the nature and extent of experiments involving intentional human exposure to radiation. Since April 1984, the investigations had been conducted by the Presidential Advisory Committee on Human Radiation Experiments, which held monthly public meetings. At the same time, a federal inter-agency working group had outlined elements of an appropriate response to the victims, including informing the subjects and their families of potential health risks and the need for medical follow-up, apologies, ongoing research, education and information programmes and monetary compensation. The final report of the Advisory Committee would be issued in May 1995.

67. Ms. HOMER (United States of America) noted that Mr. Klein had asked whether the fact that American Indians were discussed under article 1 of the Covenant meant that tribes possessed the right to self-determination under international law. As Mrs. Higgins had noted, the way in which the issue had been positioned in the text was not meant to reflect a legal conclusion. Mr. Klein had correctly noted that the concept of sovereignty as applied to tribes was not the same concept as the sovereignty of States under international law.

68. In response to Mrs. Higgins's questions, she said that in order to understand the concept of "tribal self-determination" under United States law, it was necessary to bear in mind special historical considerations concerning

the Indian tribes. Prior to the establishment of the United States, the European nations had engaged in trade and conducted relations with the tribes on a nation-to-nation basis. That mode of intercourse had been continued by the United States which, in article 1, section 8, of the Constitution, vested the federal Government with the authority to engage in relations with the tribes. In the 1830s Chief Justice John Marshall had articulated the fundamental legal principle which had guided the evolution of federal Indian law ever since, namely, that Indian tribes possessed a nationhood status and retained inherent powers of self-government. Thus, in the context of federal Indian law, tribal self-determination meant that tribes had the right to operate under their own governmental systems within the American political framework.

69. The Government's relationships with other indigenous peoples under its jurisdiction differed from that of the federal Indian relationship. There was no constitutional language referring to other indigenous groups, and hence the law had followed another course. Nevertheless it had been the policy of the United States during recent decades to support the rights of the territories to represent their own interests. With specific reference to Puerto Rico, decisions on when to conduct plebiscites on the island's territorial status had been left entirely to the local population. Regarding Hawaii, federal courts had ruled that the term "Hawaiian native" denoted ethnic origin and not political status, and thus the United States had never established a government-to-government relationship with peoples of native Hawaiian descent. The same applied to the native inhabitants of United States insular areas, all of which had been acquired by virtue of treaties with other States. The local governments of the insular areas were not examples of retained, unextinguished sovereignties. They were elected by the entire local populace, which in most instances included individuals who did not qualify as descendants from a native group.

70. Mr. Klein and Mrs. Higgins had asked about the implications of the fact that Congress could recognize or extinguish a tribe. In the context of federal Indian law, congressional actions with regard to Indians were not without constitutional limitations; they were also subject to judicial review. Indians were citizens of the United States and as such received the same constitutional protections as other citizens. Furthermore, the Fifth Amendment to the Constitution prohibited uncompensated government appropriation of Indian lands and equitable remedies were available to tribes and individuals. The Supreme Court had ruled that the constitutional standard for judicial review was whether the disputed legislation was rationally connected to the fulfilment of Congress's unique obligations to the Indian nations.

71. Those unique obligations were referred to as the Federal Indian Trust responsibility, a legal obligation under which the United States had charged itself with moral obligations of the highest responsibility and trust towards Indian tribes. It was one of the most important principles in federal Indian law. Its scope was evolving, but it basically entailed a legally enforceable fiduciary obligation on the part of the United States to protect tribal land, assets, resources and treaty rights as well as a duty to carry out the mandates of federal law with respect to Indian tribes. In several cases discussing the trust responsibility, the Supreme Court had used language suggesting that it entailed legal duties, moral obligations, and the fulfilment of understandings

and expectations that had arisen over the entire course of dealings between the United States and the tribes.

72. In answer to Mrs. Higgins's question about the limits of tribal self-identification, it was important to clarify that the relationship between the tribes and the United States was a political one. Tribes were "federally recognized" and existed politically in what was termed a "domestic dependent nation status". Federally recognized tribes possessed certain inherent rights of self-government and were also entitled to certain federal benefits, services and protections because of the special trust relationship. Congress had directed the Secretary of the Interior to publish a list of such tribes every year. Non-federally recognized groups could challenge their exclusion from the list and petition for acknowledgement, as described in paragraphs 52 and 53 of the report. If a petitioning group were to be denied recognition, it could seek redress by filing a suit in federal court, or alternatively it could seek legislative relief in Congress. Success in either instance would result in "judicially determined" or "legislatively determined" federal recognition, and a tribe recognized in either way could only be terminated by Congress.

73. With reference to the current socio-economic status of American Indians and Alaska natives, she emphasized that under self-determination policies tribes had become increasingly involved in providing educational services and health care, and substantial improvements had been noted in both those areas. Tribes were also working hard to develop diversified economies and self-sufficiency. Gaming, tourism, energy production, precious metals production, forestry, fisheries, transportation, retail and wholesale sales, ranching, manufacturing and agriculture were just some of the economic activities in which the tribes were involved.

74. She presented an overview of various legislative measures designed to protect the subsistence lifestyle of the Alaska natives and to accommodate American Indian religious, cultural and language needs such as the American Indian Religious Freedom Act, the Native American Graves Protection and Repatriation Act, the Native American Languages Act and the Indian Arts and Crafts Act.

75. Finally, she indicated that while economic conditions had improved for American Indians during recent years, indigenous communities continued to lag behind the rest of the nation with respect to social, economic and educational attainment levels. Income levels among American Indians and Alaska natives were substantially below those of all other Americans, and some 31 per cent continued to live below the poverty level compared to a 13 per cent poverty level nationwide.

The meeting rose at 12.55 p.m.